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DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Parts 622, 624 and 625

Commodity Credit Corporation

7 CFR Parts 1465 and 1470

RIN 0578–AA56

Conservation Program Recipient Reporting

AGENCY: Natural Resources Conservation Service, Commodity Credit Corporation, United States Department of Agriculture.

ACTION: Final rule.

SUMMARY: The Office of Management and Budget (OMB) issued regulatory guidance to agencies to establish requirements for Federal financial assistance applicants, recipients, and sub-recipients that are necessary for the implementation of the Federal Funding Accountability and Transparency Act of 2006 (the Transparency Act). OMB's regulations require agencies that make awards of Federal financial assistance subject to the Transparency Act to include the requirements identified in each regulation that has application or plan due dates after October 1, 2010. The Watershed Operations and Flood Prevention Program, Emergency Watersheds Protection Program, Healthy Forests Reserve Program, Agricultural Management Assistance Program, and the Conservation Stewardship Program have application or plan due dates after October 1, 2010, and therefore, the Natural Resources Conservation Service (NRCS) is incorporating the Transparency Act's recipient registration and reporting requirements into these programs' regulations. These changes, the terms of which are not subject to agency discretion, are mandatory.

DATES: *Effective Date:* The rule is effective April 8, 2011.

FOR FURTHER INFORMATION CONTACT: Martha Joseph, Special Assistant, Easements and Landscape Planning, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5109 South Building, Washington, DC 20250; Telephone: (202) 205–7704; or E-mail: *martha.joseph@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

OMB published two regulations, 2 CFR parts 25 and 170, to assist agencies and recipients of Federal financial assistance to comply with the Transparency Act (Pub. L. 109–282, as amended). Both regulations have implementation requirements beginning October 1, 2010.

The regulations at 2 CFR part 25 require, with some exceptions, recipients of Federal financial assistance to apply for and receive a Dun and Bradstreet Universal Numbering Systems (DUNS) number and register in the Central Contractor Registry. Section 25.200(a) of Title 2 of the CFR requires each agency to include the registration requirements identified in part 25 in each regulation that has application or plan due dates after October 1, 2010.

The regulations at 2 CFR part 170 establish new requirements for Federal financial assistance applicants, recipients, and subrecipients. The regulation provides standard wording that each agency must include in its awarding of financial assistance that requires recipients to report information about first-tier subawards and executive compensation under those awards. Section 170.200(a) of Title 2 of the CFR requires each agency that makes awards of Federal financial assistance subject to the Transparency Act to include the requirements identified in part 170 in each regulation that has application or plan due dates after October 1, 2010.

NRCS has determined that 2 CFR parts 25 and 170 apply to certain awards of financial assistance provided under the Watershed Operations and Flood Prevention Program (7 CFR part 622), Emergency Watershed Protection Program (7 CFR part 624), Healthy Forests Reserve Program (7 CFR part 625), Agricultural Management Assistance Program (7 CFR part 1465), and the Conservation Stewardship Program (7 CFR part 1470). Since these conservation programs either have continuous application periods or will have an application due date after October 1, 2010, NRCS determined that each of its program regulations under which NRCS provides Federal financial assistance must be amended to incorporate this requirement immediately.

Several of NRCS' other conservation programs have pending or recently promulgated rulemaking, and NRCS is incorporating parts 25 and 170 requirements as these pending rules are cleared and published. These pending rules are final rules to implement the Environmental Quality Incentives Program (7 CFR part 1466—pending), Farm and Ranch Lands Protection Program (7 CFR part 1491—published January 24, 2011), Grassland Reserve Program (7 CFR part 1415—published November 29, 2010), Wildlife Habitat Incentive Program (7 CFR part 636—published November 23, 2010), and the Wetlands Reserve Program (7 CFR part 1467—pending).

This final rule incorporates this mandated change into the regulations implementing the Watershed Operations and Flood Prevention Program, Emergency Watershed Protection Program, Healthy Forests Reserve Program, Agricultural Management Assistance Program, and the Conservation Stewardship Program. These changes are non-discretionary on the part of the agency, and thus, no public comments are being solicited.

Executive Order 12866

This final rule does not meet the criteria for a significant regulatory action as specified in Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this final rule because neither the Commodity Credit Corporation (CCC) nor NRCS is required by 5 U.S.C. 553, or by any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Paperwork Reduction Act

The General Services Administration has recently published the information collections for public comment that

provide the specific data elements required for the Transparency Act reporting of subawards and executive compensation [75 FR 43165].

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, NRCS assessed the affects of this rulemaking action on State, local, and Tribal governments, and the public. This action does not compel the expenditure of $100 million or more in any one year (adjusted by inflation) by any State, local, or Tribal governments, or anyone in the private sector; therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

List of Subjects in 7 CFR Parts 622, 624, 625, 1465 and 1470

Administrative practice and procedures, Cooperative agreements, Farmers, Federal aid programs, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 622, 624, 625, 1465, and 1470 are amended as follows:

■ 1. The authority citation for part 622 continues to read as follows:

Authority: Pub. L. 83–566, 68 Stat. 666 as amended (16 U.S.C. 1001, *et seq.*); Pub. L. 78–534, 58 Stat. 889, 33 U.S.C. 701b–1.

■ 2. Section 622.30 is amended by adding a new paragraph (d) to read as follows:

§ 622.30 General.

* * * * *

(d) Sponsors who receive financial assistance awarded after October 1, 2010, must comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended), and 2 CFR parts 25 and 170.

* * * * *

■ 3. The authority citation for part 624 continues to read as follows:

Authority: Sec. 216, Pub. L. 81–516, 33 U.S.C. 701b–1; Sec. 403, Pub. L. 95–334, as amended, 16 U.S.C. 2203; 5 U.S.C. 301.

■ 4. Section 624.6 is amended by revising paragraph (a)(2) to read as follows:

§ 624.6 Program administration.

(a) * * *

(2) Sponsors must:

(i) Contribute their share of the project costs, as determined by NRCS, by providing funds or certain services necessary to undertake the activity. Contributions that may be applied towards the sponsor's applicable cost-share of construction costs include:

(A) Cash;

(B) In-kind services such as labor, equipment, design, surveys, contract administration and construction inspection, and other services as determined by the State Conservationist; or

(C) A combination of cash and in-kind services;

(ii) Obtain any necessary real property rights, water rights, and regulatory permits;

(iii) Agree to provide for any required operation and maintenance of the completed emergency measures; and

(iv) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended), and 2 CFR parts 25 and 170.

* * * * *

■ 5. The authority citation for part 625 continues to read as follows:

Authority: 16 U.S.C. 6571–6578.

■ 6. Section 625.4 is amended by revising paragraph (b) to read as follows:

§ 625.4 Program requirements.

* * * * *

(b) *Landowner eligibility.* To be eligible to enroll an easement in the HFRP, an individual or entity must:

(1) Be the landowner of eligible land for which enrollment is sought;

(2) Agree to provide such information to NRCS, as the agency deems necessary or desirable, to assist in its determination of eligibility for program benefits and for other program implementation purposes; and

(3) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended), and 2 CFR parts 25 and 170.

* * * * *

■ 7. The authority citation for part 1465 continues to read as follows:

Authority: 7 U.S.C. 1524(b).

■ 8. Section 1465.5 is amended by revising paragraphs (c)(10) and (c)(11) and adding a new paragraph (c)(12) to read as follows:

§ 1465.5 Program requirements.

* * * * *

(c) * * *

(10) Be in compliance with the terms of all other USDA-administered conservation program agreements to which the participant is a party;

(11) Develop and agree to comply with an APO and O&M agreement, as described in § 1465.3; and

(12) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended), and 2 CFR parts 25 and 170.

* * * * *

■ 9. The authority citation for part 1470 continues to read as follows:

Authority: 16 U.S.C. 3838d–3838g.

■ 10. Section 1470.6 is amended by revising paragraphs (a)(4) and (a)(5) and adding a new paragraph (a)(6) to read as follows:

§ 1470.6 Eligibility requirements.

(a) * * *

(4) Supply information, as required by NRCS, to determine eligibility for the program, including but not limited to, information related to eligibility requirements and ranking factors, conservation activity and production system records, information to verify the applicant's status as a historically underserved producer, if applicable, and payment eligibility as established by 7 CFR part 1400;

(5) Provide a list of all members of the legal entity and embedded entities along with members' tax identification numbers and percentage interest in the entity. Where applicable, American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment; and

(6) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended), and 2 CFR parts 25 and 170.

* * * * *

Signed this 31st day of March 2011, in Washington, DC.

Dave White,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

[FR Doc. 2011–8368 Filed 4–7–11; 8:45 am]

BILLING CODE 3410–16–P

FEDERAL TRADE COMMISSION

16 CFR Part 306

Automotive Fuel Ratings Certification and Posting

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Commission issues final amendments to its Rule for Automotive Fuel Ratings, Certification and Posting ("Fuel Rating Rule" or "Rule") by allowing an alternative octane rating method and making other miscellaneous revisions. The Commission declines to issue final ethanol labeling amendments at this time.

DATES: The amendments published in this document will become effective May 31, 2011. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of May 31, 2011.

FOR FURTHER INFORMATION CONTACT: Matthew Wilshire, (202) 326–2976, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION

I. Introduction

In 2009, the Commission solicited comments on its Fuel Rating Rule as part of a systematic review of its rules and guides.[1] In response to those comments, the Commission published a Notice of Proposed Rulemaking ("NPRM") [2] on March 16, 2010, proposing: (1) An alternative octane rating method; (2) new rating, certification, and labeling provisions for blends of gasoline with more than 10 percent ethanol ("ethanol fuels"); [3] and (3) miscellaneous minor amendments. In addition, the Commission declined to revise the Rule's provisions regarding fuels containing biodiesel and biomass-based diesel (collectively, "biodiesel fuels").[4]

Commenters supported the proposed octane rating method, suggested allowing an additional octane rating method, objected to several aspects of the proposed ethanol labeling requirements, argued for revision of the Rule's biodiesel fuel provisions, and recommended further miscellaneous changes. Below, the Commission responds to those comments and announces final amendments that allow an alternative octane rating method.

The final amendments do not address ethanol fuel labeling. Instead, the Commission will address this issue at a later date. As discussed below, commenters criticized the proposed labels, supporting different or additional disclosures to prevent misfueling. Moreover, after the comment period closed, the Environmental Protection Agency ("EPA") issued a waiver pursuant to the Clean Air Act that allows use of ethanol-gasoline blends of up to 15 percent ethanol concentration ("E15") in certain conventional vehicles, subject to EPA approval. In light of the comments and EPA's waiver decision, the Commission finds that more time is necessary to address this issue. The Commission, however, will not delay final rulemaking regarding the proposed alternate octane rating method and biodiesel fuels because announcing final decisions regarding both is in the public interest.

This document first provides background on the Fuel Rating Rule, then discusses the comments submitted. Finally, it responds to those comments and describes the final amendments in detail.

II. Background

A. The Fuel Rating Rule

The Commission first promulgated the Fuel Rating Rule, 16 CFR part 306 (then titled the "Octane Certification and Posting Rule"), in 1979 in accordance with the Petroleum Marketing Practices Act ("PMPA"), 15 U.S.C. 2801 *et seq.*[5] The Rule originally applied only to gasoline. In 1993, pursuant to amendments to PMPA, the Commission expanded the Rule to cover liquid alternative fuels.[6] Currently, the Rule defines "alternative liquid automotive fuels," as including, but not limited to, certain listed fuels. That list does not include ethanol fuels below 70 percent concentration ("Mid-Level Ethanol blends").[7] In 2008, the Commission again amended the Rule to incorporate specific labeling requirements for biodiesel fuels above 5 percent concentration, as required by Section 205 of the Energy Independence and Security Act of 2007 ("EISA"), 42 U.S.C. 17021.[8]

The Fuel Rating Rule designates methods for rating and certifying fuels, as well as posting the ratings at the point of sale. The Rule also requires refiners, importers, and producers of any liquid automotive fuel to determine that fuel's "automotive fuel rating" before transferring it to a distributor or retailer. For gasoline, covered entities must determine the octane rating by deriving research octane and motor octane numbers using "ASTM International" ("ASTM") [9] standards D2699 and D2700, respectively, and then averaging the results. For alternative fuels, except biodiesel fuels, the rating is the minimum percentage of the principal component of the fuel and a brief description of the fuel.[10] In addition, any covered entity, including a distributor, that transfers a fuel must certify the fuel's rating to the transferee either by including it in papers accompanying the transfer or by letter. Finally, the Rule requires retailers to post the fuel rating by adhering a label to the retail fuel pump and provides precise specifications regarding the content, size, color, and font of the label.

B. Procedural History

The Commission received 12 comments in response to its March 2, 2009 **Federal Register** Notice.[11] The comments generally supported the Rule but proposed several amendments, focusing on three key issues. First, commenters requested that the Commission allow gasoline octane rating using a method specified in ASTM D2885, "Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-Line Direct Comparison Technique" (the "On-

[1] *Federal Trade Commission: Automotive Fuel Ratings, Certification and Posting: Request for Public Comments,* 74 FR 9054 (Mar. 2, 2009) ("*RPC*").

[2] *Federal Trade Commission: Automotive Fuel Ratings, Certification and Posting: Notice of Proposed Rulemaking,* 75 FR 12470 (Mar. 16, 2010) ("*NPRM*").

[3] The Rule already provides requirements for ethanol fuels with at least 70 percent concentration, E85. That fuel generally contains 85 percent ethanol mixed with 15 percent gasoline. 16 CFR 306.0(i)(2)(ii).

[4] Biodiesel fuels include pure biodiesel and biomass-based diesel, as well as blends of those fuels with conventional diesel. Biodiesel is a diesel fuel produced by transforming animal fat or vegetable oil into automotive fuel. Biodiesel serves as a diesel substitute and is usually blended with diesel for sale at retail pumps. Biomass-based diesel is a larger category of diesel fuel substitutes produced from nonpetroleum renewable resources and that meet the registration requirements for fuels and fuel additives established by the Environmental Protection Agency. Biodiesel is a subset of biomass-based diesel. For further background on biodiesel fuels, see the Commission's announcement of amendments expanding the Rule to cover those fuels. *Federal Trade Commission: Automotive Fuel Ratings, Certification and Posting: Final Rule on Biodiesel Labeling,* 73 FR 40154 (Jul. 11, 2008) ("*Biodiesel Fuel Rulemaking*").

[5] *Federal Trade Commission: Automotive Fuel Ratings, Certification and Posting: Final Rule,* 44 FR 19160 (Mar. 30, 1979).

[6] *Federal Trade Commission: Automotive Fuel Ratings, Certification and Posting: Final Rule,* 58 FR 41356 (Aug. 3, 1993).

[7] 16 CFR 306.0(i)(2).

[8] *Biodiesel Fuel Rulemaking,* 73 FR 40154.

[9] ASTM International, formerly known as the American Society for Testing and Materials, develops international voluntary consensus standards for various products, including automotive fuel. *See http://www.astm.org.*

[10] The Rule requires rating biodiesel fuels by the percentage of biodiesel or biomass-based diesel in the fuel.

[11] The comments in response to the March 2, 2009 **Federal Register** Notice are located at: *http://www.ftc.gov/os/comments/fuelratingreview/index.shtm.*

Line Method").[12] Second, several commenters supported new labeling requirements for Mid-Level Ethanol blends to prevent consumers from using those blends in their conventional cars, which would put their warranties at risk and could harm various vehicle components.[13] Finally, commenters urged the Commission to change its biodiesel fuel provisions in two ways: (1) By requiring producers to rate biodiesel blends at or below 5 percent concentration; and (2) by exempting biomass-based diesel from the Rule.[14]

On March 16, 2010, the Commission published an NPRM responding to the commenters' suggestions and proposing four substantive Rule amendments. First, to allow Mid-Level Ethanol blend labeling above 10 percent and below 50 percent concentration, the proposed amendments would have required rating ethanol fuels by the amount of ethanol in the blend, rather than by the principal component of the fuel. Second, the proposed amendments would have required retailers to post labels disclosing a Mid-Level Ethanol blend's ethanol content by displaying a broad range of "10 to 70 percent ethanol," a narrower range, or a specific percentage. Third, the proposed amendments would have required all ethanol fuel labels, including those for E85,[15] to contain the additional disclosures "may harm some vehicles" and "check owner's manual." In the NPRM, the Commission explained that "[t]his additional information should assist consumers in identifying the proper fuel for their vehicles."[16] Fourth, the proposed amendments would have allowed the On-Line Method. After reviewing ASTM D2885, the Commission agreed that the method yielded the same results as the method the Rule currently allows.[17] Finally, the Commission proposed minor miscellaneous amendments, which included updating certain ASTM standard references, modifying the Rule language for clarification, and addressing some typographical errors.[18]

The Commission did not propose revising the Rule's biodiesel fuel provisions. The Commission explained that rating blends at or below 5 percent would unnecessarily burden producers. Furthermore, the Commission noted, retailers that blended biodiesel could either test the resulting blend, or blend in a manner that would ensure that the fuel fell within one of the Rule's three biodiesel labeling categories, and, therefore, did not need rating information to comply with the Rule.[19] With respect to biomass-based diesel, the Commission explained that, under EISA, it had no discretion to exempt any biomass-based diesel from the Rule's labeling requirements.[20]

III. Comments in Response to the NPRM

The Commission received 62 comments in response to the NPRM.[21] As in the prior comment period, commenters focused on octane rating methods, ethanol labeling, and biodiesel fuel rating. They also proposed several minor miscellaneous changes to the Rule.

A. Octane Rating

The American Petroleum Institute ("API"), ConocoPhillips, Marathon Petroleum Company, LLC ("Marathon"), and the National Petrochemical & Refiners Association ("NPRA") addressed the Commission's proposal to allow octane rating through the On-Line Method. All supported the proposal, though API and Marathon noted that the ASTM standards referenced in the proposed amendments are now outdated.[22] To prevent this problem in the future, Marathon and NPRA suggested adopting ASTM D2885 without reference to a year.[23]

Tesoro, a manufacturer and marketer of petroleum products, suggested expanding the Rule's provisions to allow octane rating through infrared analyzers ("Infrared Method"), which Tesoro asserted "provide more reliable results."[24] Tesoro argued that the Infrared Method provides more precise and accurate results, an ability to sample gasoline more efficiently, and reduced costs to industry.[25] Specifically, Tesoro reported:

> A recent interlaboratory study was conducted to demonstrate the accuracy and precision of infrared analyzers for octane. Based on the results of that study involving six laboratories, near infrared analyzers showed significantly better precision over ASTM D2699 and D2700 octane [methods].[26]

Tesoro further reported that, due in part to greater reliability, "[o]ver 25 states use infrared analyzers for screening fuel samples [to test octane levels] in the field as well as in the laboratory."[27]

Tesoro also specifically addressed the enforcement issues surrounding the Infrared Method:

> We also believe that in case of a discrepancy between the posted octane rating and the octane of the sample, ASTM D2699 and ASTM D2700 should continue to be used as the referee method. This approach, which is consistent with the enforcement approach used by State regulatory agencies, should not impose any additional enforcement burden on the Commission—since ASTM D2699 and ASTM D2700 would continue to be the referee method.[28]

As a mechanism for allowing the Infrared Method through an enforceable Rule provision, Tesoro recommended amending the Rule to allow the method only insofar as the method conforms to ASTM D6122, "Standard Practice for Validation of the Performance of Multivariate Infrared Spectrophotometers," and is specifically correlated with the ASTM D2699 and D2700 methods.[29] In addition, Tesoro submitted specific language to effect its proposed change.[30]

Several State regulators supported Tesoro's proposal. For example, the Washington State Department of Agriculture reported that it "has used portable infrared octane analyzers successfully in the field to test octane levels on gasoline motor fuels for over 10 years" and that it has "found portable infrared analyzers to be an accurate and low cost tool in determining octane level compliance."[31] Additionally, the

[12] *NPRM,* 75 FR at 12472.

[13] *Id.* at 12471–72.

[14] *Id.* at 12472–73. Commenters also proposed several minor miscellaneous changes to the Rule.

[15] The Rule currently provides specific requirements for E85, a mix of gasoline and ethanol. Although that fuel generally contains 85 percent ethanol, retailers may reduce the ethanol component to as little as 70 percent to allow proper starting and performance in colder climates.

[16] *NPRM,* 75 FR at 12474.

[17] *Id.* at 12474–75.

[18] *Id.* at 12475.

[19] *Id.* The three labeling categories are: (1) From above 5 to no more than 20 percent; (2) above 20 percent to less than 100 percent; and (3) 100 percent. 16 CFR 12(a)(4)–(9).

[20] *NPRM,* 75 FR at 12475.

[21] The comments are located at: *http://www.ftc.gov/os/comments/fuelratingnprm.*

[22] ConocoPhillips comment at 1; API comment at 7; Marathon comment at 2; NPRA comment at 2.

[23] Marathon comment at 2; NPRA comment at 2. The Tennessee Department of Agriculture generally supported adopting ASTM standards without reference to a year of publication. Tennessee Department of Agriculture comment at 3.

[24] Tesoro comment at 1. Tesoro also submitted additional documents to Commission staff during the comment period, which are included in the record.

[25] *Id.* at 1–2.

[26] *Id.* at 2.

[27] *Id.* at 4.

[28] *Id.* at 6.

[29] *Id.* at 7.

[30] *Id.* at 8. Petroleum industry members and representatives ConocoPhillips, Flint Hills Resources LP, Marathon, Suncor Energy USA, NPRA, and Valero Energy Corporation ("Valero") also supported the Infrared Method. ConocoPhillips comment at 2; Flint Hills Resources comment; Marathon comment at 2; Suncor Energy USA comment; NPRA comment at 3; Valero comment at 1.

[31] Washington State Department of Agriculture comment; *see also* Massachusetts Division of Standards comment (supporting the Infrared Method); Nevada Department of Agriculture comment (same); North Carolina Department of

National Conference on Weights and Measures ("NCWM") provided a survey showing that 17 of 24 regulatory agencies surveyed use the Infrared Method to determine if fuel dispensed at a pump has the same octane rating as posted on the label.[32]

Significantly, the Center for Auto Safety ("CAS"), a consumer group, also supported Tesoro's position. CAS explained that allowing the method would ease enforcement and, therefore, benefit consumers:

> Many States now use infrared analyzers to determine octane because they are cheaper, more accurate and permit greater number[s] of dispensing pump inspections per day than using octane engines. * * * Approving infrared analyzers calibrated to measure octane would allow greater levels of enforcement and increased quality control by refiners at lower cost.[33]

B. Biodiesel Fuels

Six commenters addressed the Rule's biodiesel fuel provisions. Generally, these commenters disagreed with the Commission's decision not to propose amendments to those provisions and urged reconsideration. The commenters supported rating biodiesel blends containing 5 percent or less biodiesel, exempting "renewable diesel" that qualifies as biomass-based diesel, and allowing a less precise content disclosure for biodiesel blends above 20 percent concentration.

The Petroleum Marketers Association of America ("PMAA") explained why it believed rating blends less than 5 percent concentration is necessary:

> Currently, distributors and retailers are receiving biodiesel blends from suppliers in which they have no idea of the actual biodiesel content. Therefore, it is impossible for these downstream parties to accurately notify consumers [of] the biodiesel content of the fuel they are offering for sale other than providing a possible blend range. * * * 97% of all retail gasoline stations are owned by petroleum marketers who are classified as small businesses under the U.S. Small Business Administration's size standards. Refiners, producers and distributors above the terminal rack are large businesses. * * * It would be entirely appropriate to shift this compliance burden to the large businesses who are not only more able to bear the burden but also in a better position to track and notify the amount of biodiesel they are adding to product upstream of the terminal rack.[34]

Fuel producer ConocoPhillips similarly favored such rating, asserting that it would alert all fuel recipients of the biodiesel content.[35]

Although the comments that addressed the issue favored expanding the Rule's biodiesel requirements, they favored abolishing the Rule's requirements to rate, certify, and post renewable diesel, a type of biomass-based diesel.[36] The commenters asserted that disclosing the presence of renewable diesel is unnecessary because, as Marathon stated, it "can not be distinguished from" petroleum diesel and "[t]here is no ASTM method to identify the volume of renewable diesel in a [blend]."[37] In addition, NPRA asserted that because pipelines do not segregate biomass-based diesel blends from conventional diesel, rating requirements "would be disruptive to the distribution industry."[38] Therefore, the commenters concluded, retailers cannot rate a biomass-based diesel blend, and rating is unnecessary.

In addition, API asserted that it is unclear whether the relevant statute defines renewable diesel as biomass-based diesel. Specifically, it argued that whether a particular batch of renewable diesel met EISA's definition of biomass-based diesel depended on how a manufacturer processed it. Thus, according to API, the Rule would require different labeling for two different batches of the exact same fuel, an outcome API described as "absurd."[39]

Finally, API suggested loosening the Rule's requirements for over 20 percent concentration biodiesel blends. Specifically, it favored amending the Rule, which currently requires disclosure of the precise volume percentage, to allow disclosure of a percentage range similar to that proposed in the NPRM for Mid-Level Ethanol blends.[40] API argued that a range disclosure would "effectively alert[ ] the consumer to the presence of biodiesel" in the fuel.[41]

C. Ethanol Fuel Labeling

A majority of the commenters submitted views and evidence regarding the proposed ethanol fuel labeling disclosures. Generally, the commenters objected to the proposed labels' disclosures. Several commenters, including an association of ethanol producers, argued that the labels unfairly conveyed a negative message about the fuel's quality, with two of those commenters asserting that the proposed disclosures were beyond the Commission's authority under PMPA. In contrast, other commenters argued that the risks from ethanol misfueling necessitated a stronger and more precise disclosure regarding the amount of ethanol in the fuel and the suitability of such fuel for various vehicles or engines.

As discussed below, the Commission is not announcing ethanol labeling amendments at this time. Therefore, this document will not analyze the ethanol labeling comments in depth.

D. Miscellaneous Issues

Several comments raised miscellaneous issues. First, as discussed above, Tesoro and other commenters noted out-of-date ASTM references in the Rule. Second, API argued that the Rule should not require a Helvetica Black font but rather allow any legible block type font because Microsoft Word does not offer Helvetica Black.[42] Third, API also noted its opposition to any provision that would impose liability for misfueling.[43] Finally, the Alliance of Automobile Manufacturers suggested revising the biodiesel fuel definitions to make clear that the Rule covers blends of biodiesel and biomass-based diesel and suggested a series of edits (*e.g.,* changing "a percentage" to "the percentage" in a Rule definition) to ensure consistency.

IV. Final Rule Amendments

After considering the record, the Commission now issues final Rule amendments. Specifically, the Commission will issue amendments allowing octane rating through the On-Line Method and adopting several minor, miscellaneous amendments. In addition, the Commission retains the Rule's biodiesel fuel provisions in their current form.

At this time, the Commission declines to issue ethanol fuel amendments because further consideration of the comments and EPA's recent waiver decision is necessary. The Commission also declines to issue amendments

Agriculture and Consumer Services comment (same).

[32] NCWM comment at 3–4.

[33] CAS comment at 2.

[34] PMAA comment at 2.

[35] ConocoPhillips comment at 2. In addition, API favored requiring entities to rate biodiesel blends at 5 percent or less concentration, but suggested rating the fuel as simply containing biodiesel rather than an exact percentage rating. API comment at 7.

[36] Renewable diesel is a diesel fuel derived from organic material. The fuel's properties satisfy ASTM D975, the standard for conventional diesel fuel. *See NPRM,* 75 FR at 40155.

[37] Marathon comment at 3; *see also* Valero comment at 1; API comment at 9.

[38] NPRA comment at 2.

[39] API comment at 9–10.

[40] *Id.* at 8.

[41] *Id.* In addition to the issues discussed in this section, Marathon opined that labeling requirements should not apply to biodiesel blends at or below 5 percent concentration. Marathon comment at 3. The Rule currently exempts such blends from labeling, and, as discussed below, the final amendments do not alter that exemption.

[42] API comment at 6.

[43] *Id.* at 7.

allowing the Infrared Method or addressing ethanol octane rating because the record is not complete regarding those issues.[44]

A. On-Line Method for Octane Rating

The NPRM proposed allowing octane rating through the On-Line Method as specified in ASTM D2885. The Rule currently requires use of octane rating methods specified in ASTM D2699 and D2700. PMPA, however, authorizes the Commission to consider other methods. The On-Line Method detailed in ASTM D2885 produces the exact same octane rating as the D2699 and D2700 methods.[45] Moreover, four commenters supported the proposed change, and none objected. Accordingly, the final amendments adopt the NPRM's amendment allowing octane rating through the On-Line Method.

B. Miscellaneous Amendments

Commenters raised several miscellaneous issues. First, some commenters noted that the current Rule and the proposed amendments contain outdated ASTM references. Accordingly, the final amendments update all ASTM references, including those proposed in the NPRM. The Commission does not, however, amend the Rule to adopt these standards without reference to a publication year, as suggested by some commenters. Doing so would incorporate those standards as they change over time. If a referenced ASTM standard changed in an unanticipated way, it could change the Rule's meaning without public notice and comment, or consideration by the Commission. Second, one commenter opposed any provision imposing liability for misfueling. Nothing in the Rule or the final amendments imposes such liability. Third, API noted that Helvetica Black font is not universally available. The final amendments, therefore, allow Helvetica Black or equivalent type. Finally, AAM suggested several technical amendments, including revisions to the biodiesel fuel definitions to make clear that the Rule covers blends of biodiesel and biomass-based diesel. Although the Commission does not intend to exclude such blends, the definitions of those fuels are prescribed by EISA and, therefore, the Commission declines to alter them.[46] The amendments incorporate AAM's other technical suggestions, except those regarding the proposed ethanol amendments.

In addition to the commenters' suggested changes, the Commission amends the Rule's labeling specifications to address an inconsistency. Section 306.12(b)(2) requires all uppercase type for labels for all alternative fuels. Sections 306.12(a)(4) through (9), however, require some lowercase type on biodiesel fuel labels. The Commission, therefore, amends § 306.12(b)(2) to make clear that its all-caps requirement does not apply to labeling requirements for biodiesel fuels.[47]

C. Biodiesel

Several commenters urged the Commission to make three changes to the Rule's biodiesel fuel provisions. First, they reiterated an earlier request to require rating and certification of biodiesel blends at or below 5 percent concentration. Second, they asked the Commission to reconsider excluding biomass-based diesel (or at least a certain type of biomass-based diesel) from the Rule. Finally, API supported allowing a biodiesel content disclosure using a broad range.[48] As explained below, the Commission declines to make any of these changes.

1. Rating and Certifying Biodiesel Blends of 5 Percent or Less Concentration

In the NPRM, the Commission declined to propose amendments subjecting biodiesel blends at or below 5 percent concentration to the Rule's rating and certification requirements. The Commission explained that doing so would unnecessarily burden producers and distributors by requiring them to rate fuel that does not require a label under EISA [49] and that retailers blending biodiesel did not need such rating and certifications to comply with the Rule. The comments did not challenge these conclusions. However, they did note that the Rule currently places the rating burden on blending retailers, which are generally small businesses, and argued that the Commission should shift the burden to producers and refiners that presumably could absorb the burden more easily.

Although the Rule may burden small businesses, adopting the proposed change would increase the *overall* rating burden on industry. Currently, the Rule does not require rating or labeling of blends at or below 5 percent concentration. Under the commenters' proposed change, however, *all* manufacturers would have to rate these blends regardless of whether retailers would eventually use them to create a fuel subject to the Rule. The commenters have not provided evidence showing that the burden on retailers who blend a fraction of this fuel would be greater than the burden they propose putting on manufacturers to rate *all* of it. Therefore, the Commission declines to require such rating.

2. Exempting Biomass-Based or Renewable Diesel From the Rule

In the NPRM, the Commission explained that it cannot exempt biomass-based diesel blends or provide for different labels because Section 205 of EISA specifically requires labels for all biomass-based diesel blends above 5 percent concentration.[50] Thus, the Commission has no discretion to exempt biomass-based diesel from labeling requirements, regardless of the properties of the fuel or its purported suitability for all diesel engines.

In response, API argued that, depending on how they are processed, certain renewable diesel blends would meet the statutory definition of "biomass-based diesel" and other renewable diesel blends with the exact same properties would not. API characterized this result as "absurd." However, API's interpretation of the law appears to rest on a misreading of EISA. Specifically, API relies on a definition of "biomass-based diesel" from Section 201 of EISA, but a different section of EISA defines "biomass-based diesel" for labeling purposes. Specifically, 42 U.S.C. 17021, which is titled "Biomass-

[44] As explained below, however, the Commission will consider publishing a separate notice of proposed rulemaking addressing the Infrared Method and ethanol octane rating.

[45] *See* ASTM D2885, Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-Line Direct Comparison Technique, available for inspection at the FTC's public reference room. Notably, D2885 provides that the On-Line Method will produce "octane numbers" as that term is defined in D2699 and D2700. *See id.* at § 5.3.

[46] 42 U.S.C. 17021(c)(4) (defining biodiesel and biomass-based diesel blends as blended with "petroleum-based diesel fuel").

[47] The Commission also amends §§ 306.0(b), (i), (j), and (l); 306.5; and 306.12(b) to correct typographical errors, and § 306.0(i) for clarification by eliminating the subsection number (3) and replacing that with "provided, however."

[48] API's comment is unclear regarding how broad a range the Commission should permit. Currently, the Rule requires disclosure of an exact percentage.

[49] *See* 42 U.S.C. 17021(b)(1) (biomass-based diesels and biodiesel blends of no more than 5 percent concentration "shall not require any additional labels").

[50] Section 205 provides that "[e]ach retail diesel fuel pump shall be labeled in a manner that informs consumers of the percent of biomass-based diesel or biodiesel that is contained in the biomass-based diesel blend or biodiesel blend that is offered for sale," and that all blends over 5 percent "shall be labeled" either "contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent" or "contains more than 20 percent biomass-based diesel or biodiesel." 42 U.S.C. 17021(b); *see also Biodiesel Fuel Rulemaking,* 75 FR at 12475.

based Diesel and Biodiesel Labeling," defines biomass-based diesel as any "diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency," without limitation, including limitations regarding co-processing.[51] Thus, all renewable diesel blends discussed in the record are "biomass-based diesel blends" under EISA, and there is no inconsistency in treatment. Therefore, the Commission declines to make the requested change.

3. Allowing a Range Disclosure for Biodiesel Blends Above 20 Percent Concentration

The Commission also declines to adopt API's suggestion to rescind the Rule's requirement to disclose the precise percentage of biodiesel for fuels over 20 percent concentration. As the Commission explained when it first announced the Rule's biodiesel provisions, the performance of biodiesel blends containing more than 20 percent biodiesel is uncertain and can vary significantly.[52] The Commission further noted that this requirement provides information of interest to consumers who favor a fuel blend with a high percentage of non-petroleum components.[53] Therefore, the Commission retains the specific percentage designation requirement for biodiesel blends of more than 20 percent.

D. Ethanol

In the NPRM, the Commission proposed new rating and certification requirements for Mid-Level Ethanol blends and new labeling requirements for all ethanol fuels. Specifically, the proposed amendments would have required rating and certifying Mid-Level Ethanol blends by their ethanol content and labeling all ethanol fuels with the statements:

- MAY HARM SOME VEHICLES
- CHECK OWNER'S MANUAL

The proposed amendments also would have required Mid-Level Ethanol blend labels to contain a content disclosure that the fuel contained between 10 to 70 percent ethanol (*i.e.,* "10%–70% ETHANOL"), a narrower range, or the precise amount of ethanol in the blend.

As noted above, commenters generally criticized the proposed disclosures as unfairly denigrating ethanol or as insufficiently specific to prevent misfueling. In addition, after the FTC's Fuel Rating Rule comment period closed, EPA issued a Clean Air Act waiver allowing E15, which the proposed amendments defined as a Mid-Level Ethanol blend, in certain conventional vehicles.[54] Specifically, in November 2010, EPA granted a waiver allowing E15 to be used in light-duty [55] conventional vehicles, model years 2007 and later.[56] EPA extended the waiver in January 2011 to include light-duty conventional vehicles, model years 2001 and later.[57]

However, EPA placed two significant conditions on its waiver. First, the fuel must meet certain fuel quality standards.[58] Second, as part of EPA's efforts to limit E15 use to only certain conventional vehicles, the waiver requires E15 manufacturers to submit a plan for preventing misfueling. Their plan must include "[r]easonable measures for ensuring that any retail fuel pump dispensers that are dispensing [E15] are clearly labeled for ensuring that consumers do not misfuel." [59] In a separate **Federal Register** document, EPA proposed the following E15 label disclosure:

CAUTION !
This fuel contains 15% ethanol maximum
Use only in:
2007 and newer gasoline cars
2007 and newer light-duty trucks
Flex-fuel vehicles
This fuel might damage other vehicles.
Federal law *prohibits* its use in other vehicles and engines.[60]

In light of the comments and EPA's waiver decision, the Commission finds that more time is necessary to address ethanol labeling.

E. The Infrared Method and E15 Octane Rating, Certification, and Posting

Although the NPRM did not propose octane rating methods other than the On-Line Method, many commenters, including State regulators and the consumer group CAS, supported allowing the Infrared Method because it is more accurate than currently prescribed methods, less expensive, subject to an ASTM standard, and enables easy enforcement. In addition, commenters urged the Commission to require octane labels for E15 to assist owners of conventional cars that require higher-octane fuel (*e.g.,* 93 octane). However, at this time the Commission declines to amend the Rule to allow the Infrared Method or address E15 octane labeling because the record is incomplete. Specifically, all parties that may have relevant information and views on such amendments have not had the opportunity to comment. Accordingly, the Commission will consider proposing these changes in a separate notice of proposed rulemaking, which will afford opportunity to comment to all interested parties.[61]

V. Paperwork Reduction Act

The Fuel Rating Rule's octane rating and certification requirements constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) ("PRA"). Specifically, under the final amendments, refiners, importers, and producers of gasoline must determine the fuel's octane rating, and then certify that rating to any transferee. Furthermore, they must retain, for one year, records of any delivery tickets, letters of certification, or tests upon which they based the automotive fuel ratings that they certify.[62] The covered parties also must make these records available for inspection by staff of the Commission and EPA or by persons authorized by those agencies.

In its NPRM, the Commission estimated that the proposed amendments would impose additional recordkeeping and disclosure burdens. However, the Commission based those estimates on the proposed amendments related to rating, certifying, and labeling ethanol fuels. The Commission believes that the final amendments do not impose any additional burdens or costs as they provide an alternate octane rating method (*i.e.,* the On-Line Method), but do not require it. The final amendments would still allow entities to rate octane as they did under the unamended Rule. Therefore, the Commission concludes that there are no

[51] 42 U.S.C. 17021(c)(2) (incorporating the definition in 42 U.S.C. 13220(f)).

[52] *Biodiesel Fuel Rulemaking,* 73 FR at 40158.

[53] *Id.*

[54] *See Environmental Protection Agency: Partial Grant and Partial Denial of Clean Air Act Waiver Application Submitted by Growth Energy to Increase the Allowable Ethanol Content of Gasoline to 15 Percent; Decision of the Administrator,* 75 FR 68094 (Nov. 4, 2010) ("*Waiver Decision*").

[55] "Light-duty" vehicles include passenger cars, light-duty trucks, and medium-duty passenger vehicles. *See id.* at 68095.

[56] *Id.*

[57] *Environmental Protection Agency, Partial Grant of Clean Air Act Waiver Application Submitted by Growth Energy to Increase the Allowable Ethanol Content of Gasoline to 15 Percent; Decision of the Administrator,* 76 FR 4662 (Jan. 26, 2011).

[58] *Waiver Decision,* 75 FR at 68149–50.

[59] *Id.* at 68150.

[60] *Environmental Protection Agency, Regulation to Mitigate the Misfueling of Vehicles and Engines with Gasoline Containing Greater than Ten Volume Percent Ethanol and Modifications to the Reformulated and Conventional Gasoline Programs,* 75 FR 68044, 68051 (Nov. 4, 2010).

[61] A second document is necessary because the Commission cannot propose further amendments in a final rule announcement.

[62] See the Fuel Rating Rule's recordkeeping requirements, 16 CFR 306.7; 306.9; and 306.11.

incremental hours or cost burden related to these amendments.

Accordingly, the Commission believes that the final octane amendments will not impose any additional recordkeeping or disclosure burden. If the Commission issues final amendments regarding ethanol rating, certification, and labeling, it will re-examine the NPRM's burden estimates of those amendments.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires an agency to provide a Final Regulatory Flexibility Analysis with the final rule unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[63] In the NPRM, the Commission certified that the proposed amendments would have no effect.

The FTC reaffirms its belief that the final amendments will not have a significant economic impact on a substantial number of small entities. As discussed in Section V, above, the amendments allowing alternative octane measurements do not impose any new costs on covered entities because those amendments provide those entities with the option of using the octane rating method currently required by the Rule. Although the NPRM provided an initial analysis of the amendments' impact on small entities, that analysis examined only the ethanol amendments, which provided new requirements.

This document serves as notice to the Small Business Administration of the agency's certification of no effect. If the Commission issues final amendments regarding ethanol rating, certification, and labeling, it will assess the economic impact of the amendments on small entities.

List of Subjects in 16 CFR Part 306

Fuel ratings, Incorporation by reference, Trade practices.

For the reasons discussed in the preamble, the Federal Trade Commission amends title 16, Chapter I, Subchapter C, of the Code of Federal Regulations, part 306, as follows:

PART 306—AUTOMOTIVE FUEL RATINGS, CERTIFICATION AND POSTING

■ 1. Revise the authority citation for part 306 to read as follows:

Authority: 15 U.S.C. 2801 *et seq.;* 42 U.S.C. 17021.

■ 2. Amend § 306.0 by:
■ a. Revising paragraph (b);
■ b. Adding a note to paragraph (i); and
■ c. Revising paragraphs (j) and (l).

The revisions and addition read as follows:

§ 306.0 Definitions.

* * * * *

(b) *Research octane number* and *motor octane number.* (1) These terms have the meanings given such terms in the specifications of ASTM International ("ASTM") entitled "Standard Specification for Automotive Spark-Ignition Engine Fuel (published November 2010)" designated D4814–10b and, with respect to any grade or type of gasoline, are determined in accordance with test methods set forth in either:

(i) ASTM D2699–09, "Standard Test Method for Research Octane Number of Spark-Ignition Engine Fuel (published November 2009)" and ASTM D2700–09, "Standard Test Method for Motor Octane Number of Spark-Ignition Engine Fuel (published November 2009)"; or

(ii) ASTM D2885–10, "Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-Line Direct Comparison Technique (published March 2010)."

(2) The incorporations by reference of ASTM D4814–10b, ASTM D2699–09, ASTM D2700–09, and ASTM D2885–10 in paragraph (b)(1) of this Section, and in § 306.5(a), were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASTM D4814–10b, ASTM D2699–09, ASTM D2700–09, and ASTM D2885–10, may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, or may be inspected at the Federal Trade Commission, Public Reference Room, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC, or at the National Archives and Records Administration ("NARA"). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

(i) * * *

Note to paragraph (i): Provided, however, that biodiesel blends and biomass-based diesel blends that contain less than or equal to 5 percent biodiesel by volume and less than or equal to 5 percent biomass-based diesel by volume, and that meet ASTM standard D975–09b "Standard Specification for Diesel Fuel Oils (published August 2009)," are not automotive fuels covered by the requirements of this Part. The incorporation of ASTM D975–09b by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASTM D975–09b may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, or may be inspected at the Federal Trade Commission, Public Reference Room, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC, or at NARA. For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(j) *Automotive fuel rating* means—
(1) For gasoline, the octane rating.

(2) For an alternative liquid automotive fuel other than biodiesel, biomass-based diesel, biodiesel blends, or biomass-based diesel blends, the commonly used name of the fuel with a disclosure of the amount, expressed as the minimum percentage by volume, of the principal component of the fuel. A disclosure of other components, expressed as the minimum percentage by volume, may be included, if desired.

(3) For biomass-based diesel, biodiesel, biomass-based diesel blends with more than 5 percent biomass-based diesel, and biodiesel blends with more than 5 percent biodiesel, a disclosure of the biomass-based diesel or biodiesel component, expressed as the percentage by volume.

* * * * *

(l) *Biodiesel* means the monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet: The registration requirements for fuels and fuel additives under 40 CFR part 79; and the requirements of ASTM standard D6751–10 "Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels (published October 2010)." The incorporation of ASTM D6751–10 by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASTM D6751B10 may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, or may be inspected at the Federal Trade Commission, Public Reference Room, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC, or at NARA. For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/cfr/ibr_locations.html.*

* * * * *

■ 3. Revise § 306.5(a) to read as follows:

§ 306.5 Automotive fuel rating.

* * * * *

(a) To determine the automotive fuel rating of gasoline, add the research octane number and the motor octane

[63] *See* 5 U.S.C. 603–605.

number and divide by two, as explained by ASTM D4814–10b, "Standard Specifications for Automotive Spark-Ignition Engine Fuel," (incorporated by reference, see § 306.0(b)(2)). To determine the research octane and motor octane numbers you may either:

(1) Use ASTM standard test method ASTM D2699–09, "Standard Test Method for Research Octane Number of Spark-Ignition Engine Fuel" (incorporated by reference, see § 306.0(b)(2)), to determine the research octane number, and ASTM standard test method ASTM D2700–09, "Standard Test Method for Motor Octane Number of Spark-Ignition Engine Fuel" (incorporated by reference, see § 306.0(b)(2)), to determine the motor octane number; or

(2) Use the test method set forth in ASTM D2885–10, "Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-Line Direct Comparison Technique" (incorporated by reference, see § 306.0(b)(2)).

* * * * *

■ 4. Revise § 306.6(b) to read as follows:

§ 306.6 Certification.

* * * * *

(b) Give the person a letter or other written statement. This letter must include the date, your name, the other person's name, and the automotive fuel rating of any automotive fuel you will transfer to that person from the date of the letter onwards. Octane rating numbers may be rounded to a whole or half number equal to or less than the number determined by you. This letter of certification will be good until you transfer automotive fuel with a lower automotive fuel rating, except that a letter certifying the fuel rating of biomass-based diesel, biodiesel, a biomass-based diesel blend, or a biodiesel blend will be good only until you transfer those fuels with a different automotive fuel rating, whether the rating is higher or lower. When this happens, you must certify the automotive fuel rating of the new automotive fuel either with a delivery ticket or by sending a new letter of certification.

* * * * *

■ 5. Amend § 306.12 by revising paragraphs (a)(1) through (a)(5) and (b) to read as follows:

§ 306.12 Labels.

* * * * *

(a) *Layout*—(1) *For gasoline labels.* The label is 3 inches (7.62 cm) wide × 2½ inches (6.35 cm) long. The illustrations appearing at the end of this rule are prototype labels that demonstrate the proper layout. "Helvetica Black" or equivalent type is used throughout except for the octane rating number on octane labels, which is in Franklin gothic type. All type is centered. Spacing of the label is ¼ inch (.64 cm) between the top border and the first line of text, ⅛ inch (.32 cm) between the first and second line of text, ¼ inch (.64 cm) between the octane rating and the line of text above it. All text and numerals are centered within the interior borders.

(2) *For alternative liquid automotive fuel labels (one principal component), other than biodiesel, biomass-based diesel, biodiesel blends, or biomass-based diesel blends.* The label is 3 inches (7.62 cm) wide × 2½ inches (6.35 cm) long. "Helvetica Black" or equivalent type is used throughout. All type is centered. The band at the top of the label contains the name of the fuel. This band should measure 1 inch (2.54 cm) deep. Spacing of the fuel name is ¼ inch (.64 cm) from the top of the label and 3⁄16 inch (.48 cm) from the bottom of the black band, centered horizontally within the black band. The first line of type beneath the black band is ⅛ inch (.32 cm) from the bottom of the black band. All type below the black band is centered horizontally, with ⅛ inch (.32 cm) between each line. The bottom line of type is 3⁄16 inch (.48 cm) from the bottom of the label. All type should fall no closer than 3⁄16 inch (.48 cm) from the side edges of the label. If you wish to change the dimensions of this one principal component label to accommodate a fuel descriptor that is longer than shown in the sample labels, you must petition the Federal Trade Commission. You can do this by writing to the Secretary of the Federal Trade Commission, Washington, DC 20580. You must state the size and contents of the label that you wish to use, and the reasons that you want to use it.

(3) *For alternative liquid automotive fuel labels (two components).* The label is 3 inches (7.62 cm) wide × 2½ inches (6.35 cm) long. "Helvetica Black" or equivalent type is used throughout. All type is centered. The band at the top of the label contains the name of the fuel. This band should measure 1 inch (2.54 cm) deep. Spacing of the fuel name is ¼ inch (.64 cm) from the top of the label and 3⁄16 inch (.48 cm) from the bottom of the black band, centered horizontally within the black band. The first line of type beneath the black band is 3⁄16 inch (.48 cm) from the bottom of the black band. All type below the black band is centered horizontally, with ⅛ inch (.32 cm) between each line. The bottom line of type is ¼ inch (.64 cm) from the bottom of the label. All type should fall no closer than 3⁄16 inch (.48 cm) from the side edges of the label. If you wish to change the dimensions of this two component label to accommodate additional fuel components, you must petition the Federal Trade Commission. You can do this by writing to the Secretary of the Federal Trade Commission, Washington, DC 20580. You must state the size and contents of the label that you wish to use, and the reasons that you want to use it.

(4) *For biodiesel blends containing more than 5 percent and no greater than 20 percent biodiesel by volume.* (i) The label is 3 inches (7.62 cm) wide × 2½ inches (6.35 cm) long. "Helvetica Black" or equivalent type is used throughout. All type is centered. The band at the top of the label contains either:

(A) The capital letter "B" followed immediately by the numerical value representing the volume percentage of biodiesel in the fuel (e.g., "B20") and then by the term "Biodiesel Blend"; or

(B) The term "Biodiesel Blend."

(ii) The band should measure 1 inch (2.54 cm) deep. Spacing of the text in the band is ¼ inch (.64 cm) from the top of the label and 3⁄16 inch (.48 cm) from the bottom of the black band, centered horizontally within the black band. Directly underneath the black band, the label shall read "contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent." The script underneath the black band must be centered horizontally, with ⅛ inch (.32 cm) between each line. The bottom line of type is ¼ inch (.64 cm) from the bottom of the label. All type should fall no closer than 3⁄16 inch (.48 cm) from the side edges of the label.

(5) *For biomass-based diesel blends containing more than 5 percent and no greater than 20 percent biomass-based diesel by volume.* (i) The label is 3 inches (7.62 cm) wide × 2½ inches (6.35 cm) long. "Helvetica Black" or equivalent type is used throughout. All type is centered. The band at the top of the label contains either:

(A) The numerical value representing the volume percentage of biomass-based diesel in the fuel followed immediately by the percentage symbol (*e.g.,* "20%") and then by the term "Biomass-Based Diesel Blend"; or

(B) The term "Biomass-Based Diesel Blend."

(ii) The band should measure 1 inch (2.54 cm) deep. Spacing of the text in the band is ¼ inch (.64 cm) from the top of the label and 3/16 inch (.48 cm) from the bottom of the black band, centered horizontally within the black band. Directly underneath the black band, the label shall read "contains biomass-based

diesel or biodiesel in quantities between 5 percent and 20 percent." The script underneath the black band must be centered horizontally, with ⅛ inch (.32 cm) between each line. The bottom line of type is ¼ inch (.64 cm) from the bottom of the label. All type should fall no closer than 3/16 inch (.48 cm) from the side edges of the label.

* * * * *

(b) *Type size and setting*—(1) *For gasoline labels.* The Helvetica series or equivalent type is used for all numbers and letters with the exception of the octane rating number. Helvetica is available in a variety of phototype setting systems, by linotype, and in a variety of computer desk-top and phototype setting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The line "Minimum Octane Rating" is set in 12 point Helvetica Bold, all capitals, with letterspace set at 12½ points. The line "(R+M)/2 METHOD" is set in 10 point Helvetica Bold, all capitals, with letterspace set at 10½ points. The octane number is set in 96 point Franklin gothic condensed with ⅛ inch (.32 cm) space between the numbers.

(2) *For alternative liquid automotive fuel labels (one principal component).* Except as provided above, labels should conform to the following specifications. All type should be set in upper case (all caps) "Helvetica Black" or equivalent type throughout. Helvetica Black is available in a variety of computer desk-top and phototype setting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The spacing between letters and words should be set as "normal." The type for the fuel name is 50 point (½ inch (1.27 cm) cap height) "Helvetica Black," knocked out of a 1 inch (2.54 cm) deep band. The type for the words "MINIMUM" and the principal component is 24 point (¼ inch (.64 cm) cap height). The type for percentage is 36 point (⅜ inch (.96 cm) cap height).

(3) *For alternative liquid automotive fuel labels (two components).* All type should be set in upper case (all caps) "Helvetica Black" or equivalent type throughout. Helvetica Black is available in a variety of computer desk-top and phototype setting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The spacing between letters and words should be set as "normal." The type for the fuel name is 50 point (½ inch (1.27 cm) cap height) "Helvetica Black," knocked out of a 1 inch (2.54 cm) deep band. All other type is 24 point (¼ inch (.64 cm) cap height).

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–8097 Filed 4–7–11; 8:45 am]

BILLING CODE 6750–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2006–0114]

RIN 0960–AD78

Revised Medical Criteria for Evaluating Endocrine Disorders

AGENCY: Social Security Administration.

ACTION: Final Rules.

SUMMARY: We are revising the criteria in the Listing of Impairments (the listings) that we use to evaluate claims under titles II and XVI of the Social Security Act (Act) involving endocrine disorders in adults and children. The revisions reflect our adjudicative experience, advances in medical knowledge, information from medical experts, and comments we received from the public in response to an advance notice of proposed rulemaking (ANPRM), a notice of proposed rulemaking (NPRM), and at an outreach policy conference.

DATES: These rules are effective June 7, 2011.

FOR FURTHER INFORMATION CONTACT: Judy Hicks, Social Insurance Specialist, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

We are making final the rules for evaluating endocrine disorders that we proposed in an NPRM we published in the **Federal Register** on December 14, 2009 (74 FR 66069). The preamble to the NPRM discussed the changes from the current rules and our reasons for proposing those changes. To the extent that we are adopting the proposed rules as published, we are not repeating that information here. Interested readers may refer to the preamble to the NPRM.[1]

What are the listings and how do we use them?

Listings describe medical conditions that are so severe that we presume any person who has a medical condition(s) that satisfies the criteria of a listing is unable to perform any gainful activity and, therefore, is disabled. The inability to work must also have lasted or be expected to last for at least 12 continuous months or be expected to result in death; we call this provision "the duration requirement."[2] Thus, the listings are special rules that provide us with a mechanism to identify claims that should clearly be allowed. We use listings only to allow claims. We do not deny any claim solely because a person's medical condition(s) does not satisfy a listing.

Why are we revising the listings for endocrine disorders?

We are revising the listings for endocrine disorders because medical science has made significant advances in detecting endocrine disorders at earlier stages and newer treatments have resulted in better management of these conditions since we last published final rules making comprehensive revisions to the endocrine listings in 1985. Consequently, most endocrine disorders do not reach listing-level severity because they do not become sufficiently severe or do not remain at a sufficient level of severity long enough to meet our 12-month duration requirement. Therefore, we have determined that, with the exception of children under age 6 who have diabetes mellitus (DM) and require daily insulin, we should no longer have listings in sections 9.00 and 109.00 based on endocrine disorders alone.

When will we use these final rules?

We will use these final rules beginning on their effective date. We will continue to use the current listings until the date these final rules become effective. We will apply the final rules to new applications filed on or after the effective date of the final rules and to claims that are pending on and after the effective date.[3]

[1] The NPRM is available at *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a6a145.*

[2] Sections 216(i), 223(d), and 1614(a)(3) of the Act. See also §§ 404.1509, 404.1520, 416.909, and 416.920 of our regulations.

[3] This means that we will use these final rules on and after their effective date in any case in which we make a determination or decision. We expect that Federal courts will review our final decisions using the rules that were in effect at the time we

Public Comments on the NPRM

In the NPRM, we provided the public a 60-day comment period, which ended on February 12, 2010. We received 16 public comment letters. The comments came from national medical organizations, advocacy groups, a national group of Social Security claimants' representatives, individual State agencies, a Congressman, and members of the public.

We provide below summaries of the significant comments that were relevant to this rulemaking and our responses to those comments. We did not summarize or respond to some of the comments we received. Some commenters supported the proposed changes and noted provisions with which they agreed. We appreciate those comments, but they do not require a response. Some commenters also sent us comments on subjects that were unrelated to the proposed rules. These comments were outside the scope of the proposed rulemaking, and we have not responded to them.

Comment: Several commenters asked us to continue to recognize DM as a disability and not to increase the burden on claimants to prove disability on the basis of DM. Another commenter, representing several physicians in a group practice, disagreed with "changes deleting diabetes." That commenter said that a significant proportion of their patients have blindness, renal failure, vascular disease, and multiple amputations.

Response: We will continue to recognize DM as a potential cause of disability, but we are removing the prior listings because they no longer accurately identify persons who are disabled. Contrary to what some of the commenters seemed to think, we will still consider DM to be a medically determinable impairment that can result in disability, and we will continue to consider its effects under our listings. For example, we have listings in other body systems for blindness, renal failure, vascular disease, and amputations. We are removing only the specific DM listings.

When adults' medical conditions do not satisfy a listing, we must assess the particular functional effects of their impairments; that is, we must determine their "residual functional capacity" (RFC). Considering the RFC, we then determine whether they can do any past relevant work, or if they cannot, any other work that exists in the national economy, considering their RFC, age, education, and previous work experience.[4] Most persons with DM who qualified for disability benefits under the prior rules did so based on their RFC, not under the listings we are removing. Also, many persons with DM have other medical conditions that meet listings in other body systems due to complications of DM.

When a person qualifies for disability benefits under a listing, we continue to use that same listing when we later determine if he or she is still disabled. See §§ 404.1594(c)(3)(i), 416.994(b)(2)(iv), and 416.994a(b)(2). This rule applies even if we have removed or changed the listing since we last found that the beneficiary was disabled. For this reason, we will not find that a beneficiary's disability has ended solely because we have removed the DM listings or any other endocrine disorder listing. Unless we are otherwise required to do so (for example, by statute), we do not readjudicate cases because we have revised our listings.

Comment: Several commenters said that not all persons can control their DM all of the time and that treatment of any sort is often inadequate. One of these commenters stated that our proposal to eliminate all listings for DM did not consider the small subset of persons with DM who will continue to experience severe fluctuations in blood glucose levels despite their best efforts at treatment. This commenter recommended that we have listings that consider severe fluctuations in blood glucose levels and the accompanying health problems that limit a person's ability to work. One commenter said that DM can never be controlled completely; another commenter thought that the proposed rules implied that DM was curable.

Some commenters thought that we assumed that all claimants had full access to state-of-the-art healthcare. Some mentioned serious outcomes of long-term, chronic fluctuations in blood glucose on other body systems. Some also mentioned that some persons with fluctuations in blood glucose experience symptoms and signs that are not covered by listings in other body systems. One commenter was concerned that our proposal to remove the DM listings might imply to our adjudicators that we want them to deny more cases involving DM. Another commenter believed that the proposed rules implied that persons with uncontrolled DM must be noncompliant with treatment. This commenter recommended that we include substantial guidance on the complexity of managing and controlling DM and guidance about how DM can intrude on the ability to work.

Response: We did not mean to give the impression in the NPRM that there are no persons with uncontrolled DM or that all persons have access to healthcare or the best possible treatment. We acknowledge that some persons do have difficulty controlling their blood glucose and that some of them will be disabled. We also agree with the commenters that there are valid reasons for some persons' blood glucose levels to fluctuate, including hypoglycemia unawareness, mental impairments that interfere with their ability to adequately monitor and treat their conditions, and inadequate treatment. For those reasons, we include guidance about problems associated with fluctuating blood glucose levels and their effects, including diabetic ketoacidosis (DKA) and hypoglycemia. This guidance is in 9.00B5 for adults and 109.00B5 for children.

We are not including a listing for fluctuating blood glucose levels and the medical problems it causes because the reasons are highly variable, and we cannot provide criteria that would reliably identify persons with listing-level impairments based on fluctuating blood glucose levels. In order to determine whether persons with fluctuating blood glucose levels are disabled, we must assess an adult's RFC or consider functional equivalence for a child. In making these findings, we consider the symptoms and signs of DM that the commenters named. We also have listings in other body systems for several of the serious effects of uncontrolled DM cited in the comment letters. For example, we evaluate diabetic nephropathy under our genitourinary listings (6.00 and 106.00), and peripheral neuropathies under our listings for neurological disorders (11.00 and 111.00).

Nevertheless, in response to these and other comments, we have added more guidance in final 9.00B5 and 109.00B5 explaining that DM is chronic and that some persons with type 1 and type 2 DM do not achieve good control of their disorder for a variety of valid reasons. We also indicate that both type 1 and type 2 DM can have serious, disabling complications that meet the duration

issued the decisions. If a court reverses our final decision and remands a case for further administrative proceedings after the effective date of these final rules, we will apply these final rules to the entire period at issue in the decision we make after the court's remand.

[4] The definition of disability is different for children who claim disability benefits under title XVI, but the sequential evaluation process for children also includes a step at which we consider the particular functional effects of the child's medical condition(s), called "functional equivalence." Act, section 1614(a)(3)(C); §§ 416.906, 416.924, and 416.926a.

requirement. This guidance will apply not only to DKA but also to other problems associated with uncontrolled and fluctuating blood glucose levels. We did not agree, however, that we should include guidance on the complexity of managing and controlling DM and guidance about how DM can intrude on the ability to work, which the last commenter recommended. We do not believe the recommended guidance is appropriate in the context of the listings. The commenter recognized that some of the concerns were more appropriate to discussions of RFC and other issues associated with later steps of the sequential evaluation process.

We also indicated in the NPRM that we would publish a Social Security Ruling (SSR) with more detailed information about specific endocrine disorders, including DM, the types of impairments and limitations that result from these disorders, and how we determine whether persons who have DM and other endocrine disorders are disabled.[5] The SSR will address some of the symptoms and signs of DM that are not covered by listings in other body systems.

Comment: One commenter said that we did not present crucial information and data needed to support our proposal to remove the DM listing and, therefore, we should withdraw the proposal. Another commenter thought that the references we provided to support our proposal to remove the DM listings showed an absence of balance. This commenter stated that there is a substantial body of opinion that supports the existence of labile or brittle diabetes. To support this opinion, this commenter cited as examples two 2007 articles that discuss "brittle" diabetes.

Response: We disagree with both commenters. We believe that we provided substantial information to support the proposals and that the proposals were correct. In the NPRM, we explained that we used information from a variety of sources, including:

- Medical experts in the field of endocrinology, experts in other related fields, advocacy groups for persons with DM, and persons with endocrine disorders and their families;
- Persons who make disability determinations and decisions for us in State agencies and in our Office of Disability Adjudication and Review; and
- The published sources we listed in the section of references at the end of the preamble. We listed 13 references in the NPRM, most of which were specifically about DM. We provided Internet links for as many of the references as possible and informed the public that we would make all of the references available to anyone who was interested in seeing them.[6]

We also explained that we received information from public comments that responded to an ANPRM that we published in the **Federal Register** on August 11, 2005.[7] In the ANPRM, we announced our plans to update and revise the listings for the endocrine body system, we invited interested persons and organizations to send us written comments and suggestions, and we specifically cited our listings for DM. We also included citations to references we were considering at that time.[8] In the NPRM, we provided an Internet link where interested members of the public could read all of the comments we received in response to the ANPRM. We also explained that we received comments and expert input at an outreach policy conference we hosted in Atlanta, GA. We provided an Internet link to the transcript of that conference that interested members of the public could use to read the opinions we received from medical professionals, advocates, persons with endocrine disorders and their families, and our adjudicators who spoke at the conference.

We appreciated the opportunity to consider the articles the second commenter cited, but the endocrinologists, diabetologists, and other medical experts we consulted and our review of medical literature did not support the view that there is "brittle" DM. We believe that the sources we cited in the NPRM, together with the wide variety of other information we also described, represent the prevailing opinion of experts in the medical community and provide a balance of opinions.

Comment: Three commenters thought that we should keep listing 9.08B for evaluating recurrent DKA in adults. These commenters noted that persons who have repeated episodes of DKA may develop other problems. One of these commenters said that we should keep all of prior listing 9.08.

Response: We did not adopt the comments. We recognize the serious effects of DKA in sections 9.00B5a(i) and 109.00B5b. We explain in these final rules that DKA is a potentially life-threatening condition resulting from a severe insulin deficiency and that it causes the chemical balance of the body to become dangerously hyperglycemic and acidic, which usually requires hospital treatment.

As we explained in the NPRM and in our response to the comments above, the criteria in prior listing 9.08B reflected the earlier view that persons with wide fluctuations in their blood glucose levels had uncontrollable DM. According to the medical experts and relevant references we consulted, however, the listing reflected only inadequate glucose regulation. Prior listing 9.08B, therefore, included conditions that would not be disabling. With respect to keeping all of listing 9.08, we explained in the NPRM that prior listings 9.08A and C were redundant because we have other listings that address the effects they cover.[9] We will evaluate the impairments of persons who have difficulty regulating their blood glucose levels for valid reasons on an individualized basis.

Comment: Three commenters suggested that we add a listing for persons who experience frequent episodes of severe hypoglycemia. They pointed out that each episode of hypoglycemia interferes with the ability to work while the person is experiencing the episode and that frequent severe episodes can effectively make a person unable to sustain work, especially since the episodes are unpredictable and would affect regular work attendance. Two commenters noted that some persons have "hypoglycemia unawareness"; that is, they lose all or most of their ability to detect early warning signs of oncoming hypoglycemia and consequently do not take steps to treat the episode when it is still early and mild. One commenter suggested listing criteria for hypoglycemia based on an average number of documented episodes per month despite best efforts to comply with treatment.

Response: We did not adopt the comments recommending that we add a listing for severe hypoglycemia, but we did add a reference to hypoglycemia unawareness in final 9.00B5b and 109.00B5c. As with DKA, we must make individualized determinations about disability for persons who experience frequent episodes. Moreover, as the commenters recognized, even severe hypoglycemia episodes can usually be treated readily, and most persons who experience hypoglycemia episodes are able to adequately recognize and treat their symptoms. We consider the effects that frequent episodes of hypoglycemia may have on functioning at each step of the sequential evaluation process,

[5] See 74 FR at 66069.

[6] 74 FR at 66072.

[7] 70 FR at 46792.

[8] Ibid. at 46794.

[9] 74 FR 66070.

including the steps regarding the ability to do past relevant work or other work. A listing based on an average of documented episodes would include some conditions that are not disabling, and accordingly, we did not adopt the suggestion.

Comment: Two commenters requested that we include a listing for diabetic neuropathy. One of these commenters noted that sympathetic neuropathy, a type of diabetic neuropathy, is difficult to evaluate and asked that we not eliminate all listing provisions for evaluating this disorder. The other commenter believed that a reference to the neurological body system was not enough and that the criteria in listing 11.04B were too vague for evaluating diabetic neuropathy. This commenter was also concerned that some of our adjudicators might not understand that neuropathy caused by DM is different from other types of neuropathy and that it does not have to result in amputation to be disabling. The commenter suggested that we should have a listing for diabetic neuropathy that addresses peripheral, autonomic, proximal, and focal neuropathies. In support of their comments, both commenters referred to remarks made by a speaker at the outreach policy conference in Atlanta. One commenter who cited the speaker's remarks said that evaluating a "diabetic gut" is a very specialized and difficult procedure. The other commenter cited the speaker's statement that a person who has not had an amputation can still be disabled by peripheral neuropathy. This commenter believed that some adjudicators and medical experts consider only amputations.

Response: The DM listings we are removing did not include a provision for sympathetic neuropathy, so these final rules do not remove any existing provisions about that medical problem. We also do not agree that the speaker's comments at the Atlanta outreach meeting support the suggestion that we add a DM listing for neuropathy. We reviewed the remarks to which the first commenter referred, and we believe that the doctor was referring to what he perceived as shortcomings in how we consider neuropathies, including non-diabetic neuropathies, in our neurological body system in 11.00 and 111.00 of our listings. We will consider those remarks when we revise the neurological listings. Moreover, the doctor's remarks discussed the variability of the effects of neuropathy on different persons who work at different types of jobs, and we believe that his remarks support our current policy of considering those effects on a case-by-case basis.

We also do not agree that adjudicators and medical experts think that claimants with diabetic neuropathy must have an amputation before we find them disabled. To the contrary, prior listing 9.08A cross-referred to listing 11.04B, which does not contain a criterion for amputation. Rather, that listing requires significant and persistent disorganization of motor function in two extremities, so it clearly includes persons who have not had amputations. We also provide in 11.00C that persistent disorganization of motor function may manifest as paresis, sensory disturbances, or other causes. These final rules do not affect the neurological body system, so current 11.00C and listing 11.04B will still be applicable to persons with diabetic neuropathy.

Finally, as one commenter noted, diabetic neuropathy can affect different parts of the body. We provide general guidance in final 9.00B for evaluating impairments that result from endocrine disorders under the listings for other body systems. We provide examples in 9.00B5a(ii) regarding evaluation of diabetic peripheral neurovascular disease that results in amputation under 1.00, diabetic gastroparesis that results in abnormal gastrointestinal motility under 5.00, and diabetic peripheral and sensory neuropathies under 11.00. This guidance indicates that we are not limited to any specific body system or listing in evaluating the complications of DM. We will also address diabetic neuropathies in the SSR we are preparing.

Comment: Four commenters approved of proposed listing 109.08 for children who have not attained age 6 and who need daily insulin, but asked us to raise the age limit in the listing. Two of these commenters stated that the age limit in the proposed listing was too restrictive and excluded many children who clearly require constant adult supervision. One of these commenters noted that the developmental abilities of children vary greatly and that a child who has attained age 6 may well have the same medical need for adult help as younger children. Another commenter suggested that we change the rule to age 9 because this is the age at which children generally begin to become able to take a significant role in their own care. This commenter believed that DM in all children below age 9 will meet the functional equivalence example requiring 24-hour-a-day supervision for medical reasons, which we cited as one justification for the proposed new listing. 20 CFR 416.926a(m)(5). Another commenter recommended that we apply the proposed listing to all children under age 18 who have DM and require daily insulin. The commenter asserted that many children age 6 and older lack the cognition to manage their daily insulin regimen without the significant involvement of an adult, and many families cannot afford the before- and after-school adult care that a child with DM may require. Another commenter noted that all children need a certain amount of adult supervision in managing DM, especially when they are ill.

Response: Although we did not adopt the comments suggesting that we raise the age limit in listing 109.08, we did add further guidance to the rule to ensure that adjudicators appropriately consider the effects of DM in children age 6 and older. We agree with the commenters that children of any age require some level of adult supervision or support in caring for their DM. As we explained above, however, we must set listings at a level at which we can presume disability in all persons whose impairments meet the listing criteria. For the reasons we stated in the NPRM, we determined that the attainment of age 6 is the highest age at which we could have such a rule.[10]

We recognize that not all children age 6 and older are capable of managing their own DM. In these children, however, the mere need for adult supervision does not establish disability; we need to determine the nature, frequency, and extent of the supervision they need along with any other relevant factors. Final listing 109.08 presumes that children under age 6 cannot participate in their own care at the most basic level and are at risk of dying unless they have 24-hour-a-day adult supervision. Many children age 6 and older with DM that requires daily insulin participate in their own care at least at the basic level of alerting adults when they begin to experience hypoglycemia symptoms, and they often participate at higher levels.

We agree, however, with the commenters that there are some children, including some adolescents, who have a medical need for 24-hour-a-day supervision; we must evaluate their DM on a more individualized basis. We stated in the NPRM that we would find such children disabled based on the example of functional equivalence in § 416.926a(m)(5). We also said that we expected there would be other children who do not need this level of help but who would nevertheless have impairments that functionally equal the listings for other

[10] 74 FR at 66071.

reasons.[11] We therefore included guidance in proposed (now final) section 109.00C explaining that it is possible for a child age 6 or older to have the same limitations that we presume for all children under age 6; for the same reason we referred to our rules for evaluating disability in children in §§ 416.924a and 416.926a. We nevertheless believe that our statement in the NPRM was correct; as children mature, they should be able to increasingly take part in their self-care activities related to managing their DM. As a consequence, we do not agree that the DM of all children between the ages of 6 and 18 will meet the functional equivalence example in § 416.926a(m)(5) or that they will all be disabled for any other reason. Finally, with respect to the comment that many families cannot afford the before- and after-school adult care that a child with DM may require, the Act requires us to consider only the medical effects of the child's impairment; we cannot consider a family's ability to afford care for their children.

Comment: One commenter asked us to acknowledge in the final rule the seriousness and difficulty of managing DM in children. Another commenter stated that many children experience significant day-to-day variability in their condition, which necessitates daily and often hourly decisionmaking and intervention either by an adult or under the close supervision of an adult.

Response: We added language in 109.00B5 and C to clarify these issues. We will also address them in more detail in the SSR that we will publish after these rules become effective.

Other Comments

Comment: One commenter suggested that we retain listings for complex endocrine disorders, such as diabetes insipidus (DI).

Response: While it was not clear to us what the commenter meant by "complex endocrine disorders," we did not adopt the suggestion to retain a listing for DI. Generally, medication will control the symptoms and signs of DI so they do not reach listing-level severity or remain at a sufficient level of severity long enough to meet our 12-month duration requirement. When DI is not controlled and problems ensue, we evaluate the effects in other body systems or on functioning.

Other Changes

We stated in the NPRM that, if we published the proposed rules as final rules, the rules would remain in effect for 8 years after the date they become effective, unless we extend them or revise and reissue them. In these final rules, we are revising the 8-year sunset date to 5 years to conform to the timeframes we provide in most of our recent listings revisions.[12] We will monitor these rules and update them sooner if necessary.

We are also making minor editorial changes to correct unintentional inconsistencies between 9.00 and 109.00.

What is our authority to make rules and set procedures for determining whether a person is disabled under our statutory definition?

Under the Act, we have full power and authority to make rules and regulations and to establish necessary or appropriate procedures to carry out such provisions. Sections 205(a), 702(a)(5), and 1631(d)(1).

Regulatory Procedures

Executive Order 12866 as supplemented by Executive Order 13563

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the requirements for a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563 and were subject to OMB review.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis was not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

These rules do not create any new or affect any existing collections and, therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 416

Administrative practice and procedure; Blind; Disability benefits; Old Age, Public assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending 20 CFR part 404 subpart P and part 416 subpart I as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)–(b), and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b), and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend 404.1525 by revising paragraph (c)(1) and the first sentence of paragraph (c)(3) to read as follows:

§ 404.1525 Listing of Impairments in appendix 1.

* * * * *

(c) *How do we use the listings?* (1) Most body system sections in parts A and B of appendix 1 are in two parts: an introduction, followed by the specific listings.

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(3) In most cases, the specific listings follow the introduction in each body system, after the heading, *Category of Impairments.* * * *

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■ 3. Amend appendix 1 to subpart P of part 404 by:

■ a. Revising item 10 of the introductory text before part A;

■ b. Revising the table of contents entry for section 9.00 and section 9.00 in part A;

■ c. Removing sections 9.01 through 9.08 from part A; and

■ d. Revising the table of contents entry for section 109.00 and section 109.00 in part B.

The revisions read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

10. Endocrine Disorders (9.00 and 109.00): June 7, 2016.

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[11] Ibid.

[12] See for example, "Revised Medical Criteria for Evaluating Hearing Loss," 75 FR 30693 (June 2, 2010).

Part A

* * * * *

9.00 Endocrine Disorders

A. *What is an endocrine disorder?*

An endocrine disorder is a medical condition that causes a hormonal imbalance. When an endocrine gland functions abnormally, producing either too much of a specific hormone (hyperfunction) or too little (hypofunction), the hormonal imbalance can cause various complications in the body. The major glands of the endocrine system are the pituitary, thyroid, parathyroid, adrenal, and pancreas.

B. *How do we evaluate the effects of endocrine disorders?* We evaluate impairments that result from endocrine disorders under the listings for other body systems. For example:

1. *Pituitary gland disorders* can disrupt hormone production and normal functioning in other endocrine glands and in many body systems. The effects of pituitary gland disorders vary depending on which hormones are involved. For example, when pituitary hypofunction affects water and electrolyte balance in the kidney and leads to diabetes insipidus, we evaluate the effects of recurrent dehydration under 6.00.

2. *Thyroid gland disorders* affect the sympathetic nervous system and normal metabolism. We evaluate thyroid-related changes in blood pressure and heart rate that cause arrhythmias or other cardiac dysfunction under 4.00; thyroid-related weight loss under 5.00; hypertensive cerebrovascular accidents (strokes) under 11.00; and cognitive limitations, mood disorders, and anxiety under 12.00.

3. *Parathyroid gland disorders* affect calcium levels in bone, blood, nerves, muscle, and other body tissues. We evaluate parathyroid-related osteoporosis and fractures under 1.00; abnormally elevated calcium levels in the blood (hypercalcemia) that lead to cataracts under 2.00; kidney failure under 6.00; and recurrent abnormally low blood calcium levels (hypocalcemia) that lead to increased excitability of nerves and muscles, such as tetany and muscle spasms, under 11.00.

4. *Adrenal gland disorders* affect bone calcium levels, blood pressure, metabolism, and mental status. We evaluate adrenal-related osteoporosis with fractures that compromises the ability to walk or to use the upper extremities under 1.00; adrenal-related hypertension that worsens heart failure or causes recurrent arrhythmias under 4.00; adrenal-related weight loss under 5.00; and mood disorders under 12.00.

5. *Diabetes mellitus and other pancreatic gland disorders* disrupt the production of several hormones, including insulin, that regulate metabolism and digestion. Insulin is essential to the absorption of glucose from the bloodstream into body cells for conversion into cellular energy. The most common pancreatic gland disorder is *diabetes mellitus* (DM). There are two major types of DM: type 1 and type 2. Both type 1 and type 2 DM are chronic disorders that can have serious disabling complications that meet the duration requirement. Type 1 DM—previously known as "juvenile diabetes" or "insulin-dependent diabetes mellitus" (IDDM)—is an absolute deficiency of insulin production that commonly begins in childhood and continues throughout adulthood. Treatment of type 1 DM always requires lifelong daily insulin. With type 2 DM—previously known as "adult-onset diabetes mellitus" or "non-insulin-dependent diabetes mellitus" (NIDDM)—the body's cells resist the effects of insulin, impairing glucose absorption and metabolism. Treatment of type 2 DM generally requires lifestyle changes, such as increased exercise and dietary modification, and sometimes insulin in addition to other medications. While both type 1 and type 2 DM are usually controlled, some persons do not achieve good control for a variety of reasons including, but not limited to, hypoglycemia unawareness, other disorders that can affect blood glucose levels, inability to manage DM due to a mental disorder, or inadequate treatment.

a. *Hyperglycemia.* Both types of DM cause hyperglycemia, which is an abnormally high level of blood glucose that may produce acute and long-term complications. Acute complications of hyperglycemia include diabetic ketoacidosis. Long-term complications of chronic hyperglycemia include many conditions affecting various body systems.

(i) *Diabetic ketoacidosis (DKA).* DKA is an acute, potentially life-threatening complication of DM in which the chemical balance of the body becomes dangerously hyperglycemic and acidic. It results from a severe insulin deficiency, which can occur due to missed or inadequate daily insulin therapy or in association with an acute illness. It usually requires hospital treatment to correct the acute complications of dehydration, electrolyte imbalance, and insulin deficiency. You may have serious complications resulting from your treatment, which we evaluate under the affected body system. For example, we evaluate cardiac arrhythmias under 4.00, intestinal necrosis under 5.00, and cerebral edema and seizures under 11.00. Recurrent episodes of DKA may result from mood or eating disorders, which we evaluate under 12.00.

(ii) *Chronic hyperglycemia.* Chronic hyperglycemia, which is longstanding abnormally high levels of blood glucose, leads to long-term diabetic complications by disrupting nerve and blood vessel functioning. This disruption can have many different effects in other body systems. For example, we evaluate diabetic peripheral neurovascular disease that leads to gangrene and subsequent amputation of an extremity under 1.00; diabetic retinopathy under 2.00; coronary artery disease and peripheral vascular disease under 4.00; diabetic gastroparesis that results in abnormal gastrointestinal motility under 5.00; diabetic nephropathy under 6.00; poorly healing bacterial and fungal skin infections under 8.00; diabetic peripheral and sensory neuropathies under 11.00; and cognitive impairments, depression, and anxiety under 12.00.

b. *Hypoglycemia.* Persons with DM may experience episodes of hypoglycemia, which is an abnormally low level of blood glucose. Most adults recognize the symptoms of hypoglycemia and reverse them by consuming substances containing glucose; however, some do not take this step because of hypoglycemia unawareness. Severe hypoglycemia can lead to complications, including seizures or loss of consciousness, which we evaluate under 11.00, or altered mental status and cognitive deficits, which we evaluate under 12.00.

C. *How do we evaluate endocrine disorders that do not have effects that meet or medically equal the criteria of any listing in other body systems?* If your impairment(s) does not meet or medically equal a listing in another body system, you may or may not have the residual functional capacity to engage in substantial gainful activity. In this situation, we proceed to the fourth and, if necessary, the fifth steps of the sequential evaluation process in §§ 404.1520 and 416.920. When we decide whether you continue to be disabled, we use the rules in §§ 404.1594, 416.994, and 416.994a.

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Part B

* * * * *

109.00 Endocrine Disorders

A. *What is an endocrine disorder?*

An endocrine disorder is a medical condition that causes a hormonal imbalance. When an endocrine gland functions abnormally, producing either too much of a specific hormone (hyperfunction) or too little (hypofunction), the hormonal imbalance can cause various complications in the body. The major glands of the endocrine system are the pituitary, thyroid, parathyroid, adrenal, and pancreas.

B. *How do we evaluate the effects of endocrine disorders?* The only listing in this body system addresses children from birth to the attainment of age 6 who have diabetes mellitus (DM) and require daily insulin. We evaluate other impairments that result from endocrine disorders under the listings for other body systems. For example:

1. *Pituitary gland disorders* can disrupt hormone production and normal functioning in other endocrine glands and in many body systems. The effects of pituitary gland disorders vary depending on which hormones are involved. For example, when pituitary growth hormone deficiency in growing children limits bone maturation and results in pathological short stature, we evaluate this linear growth impairment under 100.00. When pituitary hypofunction affects water and electrolyte balance in the kidney and leads to diabetes insipidus, we evaluate the effects of recurrent dehydration under 106.00.

2. *Thyroid gland disorders* affect the sympathetic nervous system and normal metabolism. We evaluate thyroid-related changes in linear growth under 100.00; thyroid-related changes in blood pressure and heart rate that cause cardiac arrhythmias or other cardiac dysfunction under 104.00; thyroid-related weight loss under 105.00; and cognitive limitations, mood disorders, and anxiety under 112.00.

3. *Parathyroid gland disorders* affect calcium levels in bone, blood, nerves, muscle, and other body tissues. We evaluate

parathyroid-related osteoporosis and fractures under 101.00; abnormally elevated calcium levels in the blood (hypercalcemia) that lead to cataracts under 102.00; kidney failure under 106.00; and recurrent abnormally low blood calcium levels (hypocalcemia) that lead to increased excitability of nerves and muscles, such as tetany and muscle spasms, under 111.00.

4. *Adrenal gland disorders* affect bone calcium levels, blood pressure, metabolism, and mental status. We evaluate adrenal-related linear growth impairments under 100.00; adrenal-related osteoporosis with fractures that compromises the ability to walk or to use the upper extremities under 101.00; adrenal-related hypertension that worsens heart failure or causes recurrent arrhythmias under 104.00; adrenal-related weight loss under 105.00; and mood disorders under 112.00.

5. *Diabetes mellitus and other pancreatic gland disorders* disrupt the production of several hormones, including insulin, that regulate metabolism and digestion. Insulin is essential to the absorption of glucose from the bloodstream into body cells for conversion into cellular energy. The most common pancreatic gland disorder is *diabetes mellitus* (DM). There are two major types of DM: type 1 and type 2. Both type 1 and type 2 DM are chronic disorders that can have serious, disabling complications that meet the duration requirement. Type 1 DM—previously known as "juvenile diabetes" or "insulin-dependent diabetes mellitus" (IDDM)—is an absolute deficiency of insulin secretion that commonly begins in childhood and continues throughout adulthood. Treatment of type 1 DM always requires lifelong daily insulin. With type 2 DM—previously known as "adult-onset diabetes mellitus" or "non-insulin-dependent diabetes mellitus" (NIDDM)—the body's cells resist the effects of insulin, impairing glucose absorption and metabolism. Type 2 is less common than type 1 DM in children, but physicians are increasingly diagnosing type 2 DM before age 18. Treatment of type 2 DM generally requires lifestyle changes, such as increased exercise and dietary modification, and sometimes insulin in addition to other medications. While both type 1 and type 2 DM are usually controlled, some children do not achieve good control for a variety of reasons including, but not limited to, hypoglycemia unawareness, other disorders that can affect blood glucose levels, inability to manage DM due to a mental disorder, or inadequate treatment.

a. *Hyperglycemia.* Both types of DM cause hyperglycemia, which is an abnormally high level of blood glucose that may produce acute and long-term complications. Acute complications of hyperglycemia include diabetic ketoacidosis. Long-term complications of chronic hyperglycemia include many conditions affecting various body systems but are rare in children.

b. *Diabetic ketoacidosis (DKA).* DKA is an acute, potentially life-threatening complication of DM in which the chemical balance of the body becomes dangerously hyperglycemic and acidic. It results from a severe insulin deficiency, which can occur due to missed or inadequate daily insulin therapy or in association with an acute illness. It usually requires hospital treatment to correct the acute complications of dehydration, electrolyte imbalance, and insulin deficiency. You may have serious complications resulting from your treatment, which we evaluate under the affected body system. For example, we evaluate cardiac arrhythmias under 104.00, intestinal necrosis under 105.00, and cerebral edema and seizures under 111.00. Recurrent episodes of DKA in adolescents may result from mood or eating disorders, which we evaluate under 112.00.

c. *Hypoglycemia.* Children with DM may experience episodes of hypoglycemia, which is an abnormally low level of blood glucose. Most children age 6 and older recognize the symptoms of hypoglycemia and reverse them by consuming substances containing glucose; however, some do not take this step because of hypoglycemia unawareness. Severe hypoglycemia can lead to complications, including seizures or loss of consciousness, which we evaluate under 111.00, or altered mental status, cognitive deficits, and permanent brain damage, which we evaluate under 112.00.

C. *How do we evaluate DM in children?*

Listing 109.08 is only for children with DM who have not attained age 6 and who require daily insulin. For all other children (that is, children with DM who are age 6 or older and require daily insulin, and children of any age with DM who do not require daily insulin), we follow our rules for determining whether the DM is severe, alone or in combination with another impairment, whether it meets or medically equals the criteria of a listing in another body system, or functionally equals the listings under the criteria in § 416.926a, considering the factors in § 416.924a. The management of DM in children can be complex and variable from day to day, and all children with DM require some level of adult supervision. For example, if a child age 6 or older has a medical need for 24-hour-a-day adult supervision of insulin treatment, food intake, and physical activity to ensure survival, we will find that the child's impairment functionally equals the listings based on the example in § 416.926a(m)(5).

D. *How do we evaluate other endocrine disorders that do not have effects that meet or medically equal the criteria of any listing in other body systems?* If your impairment(s) does not meet or medically equal a listing in another body system, we will consider whether your impairment(s) functionally equals the listings under the criteria in § 416.926a, considering the factors in § 416.924a. When we decide whether you continue to be disabled, we use the rules in § 416.994a.

109.01 *Category of Impairments, Endocrine*

109.08 *Any type of diabetes mellitus in a child who requires daily insulin and has not attained age 6.* Consider under a disability until the attainment of age 6. Thereafter, evaluate the diabetes mellitus according to the rules in 109.00B5 and C.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

■ 9. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p) and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

■ 10. Amend § 416.925 by revising paragraph (c)(1) and the first sentence of paragraph (c)(3) to read as follows:

§ 416.925 Listing of Impairments in appendix 1 of subpart P of part 404 of this chapter.

* * * * *

(c) *How do we use the listings?* (1) Most body system sections in parts A and B of appendix 1 are in two parts: an introduction, followed by the specific listings.

* * * * *

(3) In most cases, the specific listings follow the introduction in each body system, after the heading, *Category of Impairments.* * * *

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[FR Doc. 2011–8389 Filed 4–7–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0992]

RIN 1625–AA00

Safety Zone; Repair of High Voltage Transmission Lines to Logan International Airport, Saugus River, Saugus, MA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Saugus River, Lynn, Massachusetts, within the Captain of the Port (COTP) Boston Zone to allow for repair of high voltage transmission lines to Logan Airport. This safety zone is required to provide for the safety of life on navigable waters during the repair of high voltage transmission lines. Entering into, transiting through, mooring or anchoring within this zone is prohibited unless authorized by the COTP.

DATES: This rule is effective from May 9, 2011 to October 5, 2011. This rule will be enforced during a consecutive 48 hour period to begin each day at 9 a.m. and end at 2 p.m. with notice of the enforcement of this safety zone to be made by all means to affect the widest publicity among the affected segments of the public, including publication of a Notice of Enforcement in the **Federal Register**, in the Local Notice to Mariners, and in the Safety Marine Information Broadcast.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–0992 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0992 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail MST1 David Labadie of the Waterways Management Division, U.S. Coast Guard Sector Boston; telephone 617–223–3010, e-mail *david.j.labadie@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 26, 2011, we published a notice of proposed rulemaking (NPRM) entitled: Safety Zone; Repair of High Voltage Transmission Lines to Logan International Airport, Saugus River, Saugus, Massachusetts, in the **Federal Register** (76 FR 4575). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

This rule is necessary to ensure the safety of vessels and workers from the hazards associated with work related to repairs of high voltage transmission lines over navigable waters. This temporary safety zone will be in effect during the repair of the high voltage transmission lines that feed Logan Airport. The safety zone will be enforced immediately before, during and after the start of the repairs. National Grid, the transmission line repair company has not specified the exact date repairs will commence, but they have advised the Coast Guard that repairs are planned for a 48 hour period in May, 2011, to begin each day at 9 a.m. and end at 2 p.m.

The COTP will inform the public regarding the exact repair dates and details of the work covered by this safety zone using a variety of means, including, but not limited to, Notice of Enforcement (NOE) to be published in the **Federal Register**, Broadcast Notice to Mariners and Local Notice to Mariners.

All persons and vessels shall comply with the instructions of the COTP Boston or the designated on-scene representative. Entering into, transiting through, mooring or anchoring within the safety zone is prohibited unless authorized by the COTP Boston or the designated on scene representative. The COTP or the designated on scene representative may be contacted via VHF Channel 16 or by telephone at (617) 223–5750.

Discussion of Comments and Changes

We received no comments. A change has been made to this rule regarding how the Coast Guard will notify the public of the enforcement period. We published a NPRM entitled: Safety Zone; Repair of High Voltage Transmission Lines to Logan International Airport, Saugus River, Saugus, Massachusetts, in the **Federal Register** (76 FR 4575) on January 26, 2011 in which we indicated that we expected to receive the repair dates during the rulemaking period and that we would publish them in the final rule. National Grid has not yet provided the Coast Guard an exact repair date due to their inability to determine the availability of the contractors performing the repair work. Thus, the Coast Guard is unable to provide the repair dates or the period in which we intend to enforce the safety zone in this Final Rule. When the exact repair dates are determined, notice of the enforcement of this safety zone to be made by all means to affect the widest publicity among the affected segments of the public, including publication of a Notice of Enforcement in the **Federal Register**, in the Local Notice to Mariners, and in the Safety Marine Information Broadcast.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard determined that this rule is not a significant regulatory action for the following reasons: The safety zone will be of limited duration, is located in a waterway that has no deep draft commercial traffic and is designed to avoid, to the extent possible, fishing and recreational boating traffic routes. Persons and vessels may still enter, transit through, anchor in, or remain within the regulated area if they obtain permission from the COTP or the designated representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, moor or anchor in a portion of the Saugus River during a 48 hour enforcement period related to repairs of high voltage transmission lines to Logan Airport.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: National Grid intends to make repairs to the high voltage transmission lines running to Logan Airport during a 48 hour period between the hours of 9 a.m. and 2 p.m. This time window will allow the local lobster fishing fleet to transit to the fishing grounds and return home at night with only minor inconvenience. The local harbormasters have notified their tenants in advance of the intended repairs, thus allowing Saugus River users to plan accordingly. Vessel traffic will be allowed to pass through the zone prior to 9 a.m. and after 2 p.m. and if

necessary through the zone if they first obtain permission from the COTP. Before the effective period, we will issue maritime advisories widely available to users of the river. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it. We did not receive any comments for this section.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact ST1 David Labadie at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard. We did not receive any comments for this section.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). We did not receive any comments for this section.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism. We did not receive any comments for this section.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble. We did not receive any comments for this section.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. We did not receive any comments for this section.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. We did not receive any comments for this section.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children. We did not receive any comments for this section.

Indian Tribal Governments

This rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. We did not receive any comments for this section.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211. We did not receive any comments for this section.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards. We did not receive any comments for this section.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0992 to read as follows:

§ 165.T01–0992 Safety Zone; Repair of High Voltage Transmission Lines to Logan International Airport; Saugus River, Saugus, MA.

(a) *General.* A temporary safety zone is established for the event described in paragraph (a)(1):

(1) Repair of high voltage transmission lines to Logan International Airport; Saugus River, Saugus, MA.

(i) All waters of the Saugus River, from surface to bottom, within a 250-yard radius of position 42°26′ 42″ N; 070°58′ 14″ W.

(ii) *Effective Period.* This rule is effective May 9, 2011 to October 10, 2011.

(iii) *Enforcement Period.* This rule will be enforced during a consecutive 48 hour period to begin each day at 9 a.m. and end at 2 p.m. with notice of the enforcement of this safety zone to be made by all means to affect the widest publicity among the affected segments of the public, including publication of a Notice of Enforcement in the **Federal Register**, in the Local Notice to Mariners, and in the Safety Marine Information Broadcast.

(b) *Regulations.*

(1) In accordance with the general regulations in Section 165.23 of this part, entry into, transiting or anchoring within this regulated area is prohibited unless authorized by the COTP Boston, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the COTP Boston or the designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port Boston is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Boston to act on his behalf. The on-scene representative will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The COTP or the designated on scene representative may be contacted by telephone at 617–223–5750 or on VHF Channel 16.

(4) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may do so if they obtain permission from the COTP or the designated representative by contacting the COTP Sector Boston by telephone at 617–223–5750 or VHF radio channel 16.

Dated: March 25, 2011.

John N. Healey,

Captain, U.S. Coast Guard, Captain of the Port Boston.

[FR Doc. 2011–8372 Filed 4–7–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0988; FRL–8866–8]

Glyphosate (*N*-(phosphonomethyl) glycine); Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation replaces the established tolerance for residues of glyphosate in or on sweet corn, grain with corn, sweet, kernel plus cob with husk removed and reduces the established tolerance for residues of glyphosate and *N*-acetyl-glyphosate in or on poultry, meat. Monsanto Company requested these tolerances under the Federal Food, Drug and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 8, 2011. Objections and requests for hearings must be received on or before June 7, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0988. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Kable Bo Davis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 306–0415; e-mail address: *kable.davis@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0988 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before June 7, 2011. Addresses for mail

and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2009–0988, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of March 24, 2010 (75 FR 14154–14157) (FRL–8815–6), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9F7644) by Monsanto Company, 1300 I St., NW., Suite 450 East, Washington, DC 20052. The petition requested that 40 CFR part 180 be amended by replacing the established tolerances for residues of the herbicide, glyphosate, in or on sweet corn, grain with the following: Corn, sweet, kernel plus cob with husk removed at a tolerance level of 3.0 parts per million (ppm) and corn, sweet, forage at a tolerance level of 9.0 ppm. The petition also requested a reduction in the established tolerance for residues of glyphosate and its metabolite (*N*-acetyl-glyphosate) in or poultry meat from 4.0 ppm to 0.1 ppm, as they believe the tolerance level was inadvertently increased when the poultry tolerances were moved from 40 CFR 180.364 (a)(1) to (a)(2). There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA is revising the requested actions in several respects. EPA has concluded that a tolerance for residues of glyphosate in or on corn, sweet, kernel plus cob with husk removed should be set at 3.5 ppm, not 3.0 ppm. Since the proposed forage tolerance is less than the currently established tolerance for this commodity, EPA has concluded that a revision to the currently established forage tolerance is unnecessary. EPA is also modifying the tolerance expression for 40 CFR 180.364(a)(1) and (a)(2) to clarify the coverage of the tolerance and the compounds to be measured in determining compliance with tolerance levels. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *"

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for glyphosate including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with glyphosate follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Glyphosate is of low acute toxicity following oral, dermal, and inhalation exposure. It is a mild eye irritant, slight skin irritant, and is not a dermal sensitizer in guinea pigs. Inhalation risk assessments are not required based on the low toxicity of the formulation products (toxicity category III or IV) and the physical characteristics of the technical product. An acute dose and endpoint for assessing acute risk have not been selected for any population subgroups because no effect that could be attributed to a single exposure (dose) was observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits.

A chronic feeding/carcinogenicity study in rats found no systemic effects in any of the parameters examined (body weight, food consumption, clinical signs, mortality, clinical pathology, organ weights, and histopathology). In a second chronic feeding/carcinogenicity study in rats tested at higher dietary levels, a lowest-observed-adverse-effect level (LOAEL) was identified at 940-milligrams/kilograms/day (mg/kg/day) & 1,183-mg/kg/day (male/female) based on decreased body-weight gains in females and increased incidence of cataracts and lens abnormalities, decreased urinary pH, increased absolute liver weight, and increased relative liver weight/brain weight in males. No evidence of carcinogenicity was found in rats or mice. In a chronic toxicity study in dogs, no systemic effects were found.

Acceptable developmental toxicity studies in the rat and rabbit are available, as is an acceptable 2-generation reproduction study in the rat. No significant reproductive and developmental toxic effects were found. A focal tubular dilation of the kidneys was observed in a 3-generation reproductive study on rats at the 30-mg/kg/day high dose treatment level (HDTL), however a 2-generational reproductive study on rats did not observe the same effect at the 1,500-mg/kg/day HDTL, nor were any adverse reproductive effects observed at any dose level. EPA concluded that the focal tubular dilation of the kidneys at the 30-mg/kg/day level was a spurious rather than a glyphosate-related effect.

In a prenatal developmental toxicity study in rats, maternal (systemic) effects observed included mortality, increased clinical signs, and reduced body-weight gain at the HDTL (3,500-mg/kg/day). Developmental (fetal) effects were observed only in the high-dose group

and included decreases in total implantations/dam and nonviable fetuses/dam, increased number of litters and fetuses with unossified sternebrae, and decreased mean fetal body weights. In a prenatal developmental toxicity study in rabbits, maternal (systemic) effects observed included mortality and clinical signs of toxicity at the HDTL (350-mg/kg/day). In the rabbits, developmental toxicity was not observed at any dose. On the basis of developmental studies in rats and rabbits and reproductive findings in rats, glyphosate exhibited no evidence of increased susceptibility of offspring.

Neurotoxicity has not been observed in any of the acute, subchronic, chronic, developmental, or reproductive studies performed with glyphosate.

Specific information on the studies received and the nature of the adverse effects caused by glyphosate as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled "Glyphosate. Section 3 Registration for Application of the Potassium Salt of Glyphosate to Glyphosate-Tolerant Sweet Corn. Human-Health Risk Assessment," pp. 26–27 in docket ID number EPA–HQ–OPP–2009–0988.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern (LOC) to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which the NOAEL the LOAEL. Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) (a = acute c = chronic) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for glyphosate used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR GLYPHOSATE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary	An endpoint of concern (effect) attributable to a single dose was not identified in the database.		
Chronic dietary (All populations).	NOAEL= 175 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 1.75 mg/kg/day cPAD = 1.75 mg/kg/day.	Developmental Toxicity Study—Rabbit: Maternal LOAEL = 350 mg/kg/day based on diarrhea, nasal discharge and death in maternal animals.
Incidental oral short-term (1 to 30 days).	NOAEL= 175 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = < 100	Developmental Toxicity Study—Rabbit: Maternal LOAEL = 350 mg/kg/day based on diarrhea, nasal discharge and death in maternal animals.
Incidental oral intermediate-term (1 to 6 months).	NOAEL= 175 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = < 100	Developmental Toxicity Study—Rabbit: Maternal LOAEL = 350 mg/kg/day based on diarrhea, nasal discharge and death in maternal animals.
Dermal short-term (1 to 30 days) Dermal intermediate-term (1 to 6 months).	None	None	Based on the lack of toxicity up to the highest dose tested (1,000 mg/kg/day) in the 21 day dermal toxicity study in rabbits and the lack of concern for developmental and reproductive effects, the quantification of dermal risks was not conducted.
Inhalation short-term (1 to 30 days) Inhalation (1 to 6 months).	None	None	Based on the lack of toxicity up to the highest concentration tested (0.36 mg/L) in the 28-day inhalation toxicity study in rats, and the physical characteristics of the technical, the quantification of inhalation risks was not conducted.
Cancer (Oral, dermal, inhalation).	None	None	No evidence of carcinogenicity.

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL. UF_S = use of a short-term study for long-term risk assessment. UF_{DB} = to account for the absence of data or other data deficiency. FQPA SF = Food Quality Protection Act Safety Factor.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to glyphosate, EPA considered exposure under the petitioned-for tolerances as well as all existing glyphosate tolerances in 40 CFR 180.364. EPA assessed dietary exposures from glyphosate in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

No such effects were identified in the toxicological studies for glyphosate; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculture Continuing Survey of Food Intake by Individuals (USDA CSFII) (1994–1996 and 1998). The chronic analysis assumed tolerance-level residues, 100 percent crop treated (PCT), and Dietary Exposure Evaluation Model (DEEM (version 7.81)) default processing factors and incorporated glyphosate drinking water monitoring data.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that glyphosate does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

2. *Dietary exposure from drinking water.* The Agency used monitoring data from the United States Geological Survey (USGS) National Water-Quality Assessment Program (NAWQA) to calculate drinking water exposure. For chronic dietary risk assessment, the water concentration of value 13.5 parts per million (ppb) was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

The sweet corn use is not anticipated to result in residential exposure. However, residential exposure is anticipated from the registered broadcast and spot treatment to residential lawns, gardens, and recreational areas including parks and golf courses. Based on the registered residential use patterns, there is a potential for short-term and intermediate-term dermal and inhalation exposures to homeowners who mix and apply products containing glyphosate. Since short- and intermediate-term dermal and inhalation endpoints were not selected, no residential handler/applicator exposure assessment was conducted. Post-application dermal and inhalation exposure assessments were not conducted since short- and intermediate-term dermal and inhalation endpoints were not selected. Based on registered use patterns, toddlers may have short-term post-application incidental oral exposure from hand-to-mouth, object to mouth, and soil ingestion behavior on treated lawns and swimmers may have short-term post-application incidental oral exposures from treated surface water. Exposures and risks from these scenarios were assessed because an applicable endpoint was identified. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found glyphosate to share a common mechanism of toxicity with any other substances, and glyphosate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that glyphosate does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA SF. In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no quantitative or qualitative evidence of increased susceptibility of rats or rabbit fetuses to *in utero* exposure in developmental studies. A focal tubular dilation of the kidneys was observed in a 3-generation reproductive study on rats at the 30-mg/kg/day HDTL, however a 2-generational reproductive study on rats did not observe the same effect at the 1,500-mg/kg/day HDTL, nor were any adverse reproductive effects observed at any dose level. A clear NOAEL was established and the chronic reference dose was set at a level well below (~17-fold) this effect. Therefore, the endpoints selected for risk assessment are protective of the effects seen in the 3-generation rat reproduction study. There are no residual uncertainties for pre- or postnatal toxicity.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database is complete with the exception of recently-required studies on acute and subchronic neuorotoxicity and immunotoxicity. There is no evidence of neurotoxicity in any of the toxicology studies. Accordingly, although an acute and subchronic neurotoxicity studies are now required as part of new data requirements, EPA does not believe that conducting these studies will result in a lower POD than that currently used for overall risk assessment, and therefore, a database uncertainty factor is not needed to account for lack of these studies.

ii. The toxicology database for glyphosate does not show any evidence of treatment-related effects on the immune system. The overall weight of evidence suggests that this chemical does not directly target the immune system. Accordingly, although an immunotoxicity study is required as a part of the new data requirements in the 40 CFR part 158 for conventional pesticide registration, EPA does not believe that conducting a functional immunotoxicity study will result in a lower POD than that currently use for overall risk assessment, and therefore, a data base uncertainty factor is not needed to account for lack of this study.

iii. There is no quantitative or qualitative evidence of increased susceptibility of rats or rabbit fetuses to *in utero* exposure in developmental studies.

iv. The dietary exposure analysis of exposure to glyphosate in food is conservative as it assumed tolerance level residues and 100 PCT. EPA made conservative (protective) assumptions in the water modeling used to assess exposure to glyphosate in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers.

These assessments will not underestimate the exposure and risks posed by glyphosate.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, glyphosate is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to glyphosate from food and water will utilize 12% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of glyphosate is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Glyphosate is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to glyphosate.

Short-term incidental oral exposure may occur to young children (swimmer and turf non-dietary ingestion) and adults (swimmers). For young children, short-term aggregate exposure includes chronic dietary (food and water) and incidental oral ingestion exposure resulting from the turf use (highest exposure of all possible scenarios). For adults, short-term aggregate exposure includes chronic dietary exposure (food and water) and incidental oral ingestion exposure resulting from the aquatic use (highest exposure of all possible scenarios). See Table 6.0.1 in the document titled "Glyphosate. Section 3 Registration for Application of the Potassium Salt of Glyphosate to Glyphosate-Tolerant Sweet Corn. Human-Health Risk Assessment" in docket ID number EPA–HQ–OPP–2009–0988 for a summary of the short-term aggregate exposures and risk estimates (the populations included represent those with the highest dietary exposures). For glyphosate, the LOC is for MOEs below 100. Since the aggregate MOEs are ≥720, short-term aggregate exposure to glyphosate does not pose a risk of concern.

4. *Intermediate-term risk.* Since the short-/intermediate-term incidental oral endpoints are identical, the short-term risk assessments are protective of intermediate-term exposure.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, glyphosate is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to glyphosate residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high-performance liquid chromatography (HPLC) equipped with a fluorescence detector method; LOQ = 0.05 ppm) is available to enforce the tolerance expression.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established any MRLs for sweet corn commodities; however, it has established an MRL for residues of glyphosate, per se, in/on poultry, meat at 0.05 ppm. The U.S. tolerance of 0.10 ppm for poultry, meat is necessarily higher than the Codex MRL to account for residues of both gyphosate and its metabolite N-acetyl glyphosate. N-acetyl glyphosate is found in genetically modified (GMO) glyphosate-resistant commodities, including corn and soybeans; that are used as feed items for poultry in the U.S. Therefore, it is included in the U.S. tolerance expression for poultry but not the Codex expression, accounting for the difference in the established MRLs.

C. Revisions to Petitioned-For Tolerances

EPA has concluded that a tolerance for residues of glyphosate in or on corn, sweet, kernel plus cob with husk removed at 3.5 ppm is needed because the highest residue from the field trials was 3.1 ppm. Since the proposed forage tolerance (9 ppm) is less than the currently established tolerance for this commodity (100 ppm), EPA has concluded that a revision to the currently established tolerance is unnecessary.

Finally, EPA is revising the tolerance expressions in 40 CFR 180.364(a)(1) and 40 CFR 180.364(a)(2) to clarify the chemical moieties that are covered by the tolerances and specify clearly how compliance with the tolerances is to be measured.

V. Conclusion

Therefore this regulation changes the established tolerance for residues of glyphosate in or on corn, sweet, grain (at 0.1 ppm) to 3.5 ppm for residues of glyphosate in or on corn, sweet, kernel plus cob with the husk removed. This regulation reduces the established tolerance for residues of glyphosate and *N*-acetyl-glyphosate in or on poultry, meat from 4.0 ppm to 0.10 ppm. This regulation also changes the tolerance expression for 40 CFR 180.364(a)(1) and (a)(2).

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May

22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the national government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 29, 2011.

G. Jeffery Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.364 is amended by:

i. Revising the introductory text in paragraph (a)(1), and in the table, revise the entry for corn, sweet, grain 0.1 ppm; to corn, sweet, kernel plus cob with husk removed at 3.5 ppm; and

ii. Revising the introductory text in paragraph (a)(2), and in the table, revise the entry for poultry, meat 4.0 ppm to 0.10 ppm. The revisions read as follows:

§ 180.364. Glyphosate; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of glyphosate, including its metabolites and degradates, in or on the commodities listed below resulting from the application of glyphosate, the isopropylamine salt of glyphosate, the ethanolamine salt of glyphosate, the dimethylamine salt of glyphosate, the ammonium salt of glyphosate, and the potassium salt of glyphosate. Compliance with the following tolerance levels is to be determined by measuring only glyphosate (*N*-(phosphonomethyl)glycine).

Commodity	Parts per million
* * * * *	
Corn, sweet, kernel plus cob with husk removed	3.5
* * * * *	

(2) Tolerances are established for residues of glyphosate, including its metabolites and degradates, in or on the commodities listed below resulting from the application of glyphosate, the isopropylamine salt of glyphosate, the ethanolamine salt of glyphosate, the dimethylamine salt of glyphosate, the ammonium salt of glyphosate, and the potassium salt of glyphosate. Compliance with the following tolerance levels is to be determined by measuring only glyphosate (*N*-(phosphonomethyl)glycine) and its metabolite *N*-acetyl-glyphosate (*N*-acetyl-*N*-(phosphonomethyl)glycine; calculated as the stoichiometric equivalent of glyphosate).

Commodity	Parts per million
* * * * *	
Poultry, meat	0.10
* * * * *	

* * * * *

[FR Doc. 2011–8428 Filed 4–7–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 520 and 532

[Docket No. 10–03]

RIN 3072–AC38

Non-Vessel-Operating Common Carrier Negotiated Rate Arrangements; Correction

April 5, 2011.

AGENCY: Federal Maritime Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Maritime Commission is correcting a final rule that appeared in the **Federal Register** on March 2, 2011, exempting licensed non-vessel-operating common carriers that enter into negotiated rate arrangements from the tariff rate publication requirements of the Shipping Act of 1984. This correction clarifies that the negotiated rate arrangement must be agreed to prior to receipt of the cargo and removes the requirement that non-vessel-operating common carriers indicate their intention to move cargo under negotiated rate arrangements on their Form FMC–1 on file with the Commission.

DATES: Effective April 18, 2011.

FOR FURTHER INFORMATION CONTACT: *Legal Information:* Elisa Holland, 202–523–5740, *generalcounsel@fmc.gov;*

Technical Information: George A. Quadrino, 202–523–5800; Gary G. Kardian, 202–523–5856, *tradeanalysis@fmc.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. 2011–4599 appearing in the **Federal Register** of Wednesday, March 2, 2011 (76 FR 11351), the following corrections are made:

§ 532.5 [Corrected]

■ 1. On page 11361, in the first column, in § 532.5 Requirements for NVOCC negotiated rate arrangements, the word "contain" in paragraph (b) is capitalized and, paragraph (c) is corrected to read as follows:

"(c) Be agreed to by both NRA shipper and NVOCC, prior to receipt of cargo by the common carrier or its agent (including originating carriers in the case of through transportation);"

§ 532.6 [Corrected]

■ 2. On page 11361, in the second column, in § 532.6 Notices, the paragraph designations are removed and the text of the section is correctly revised to read as follows:

"An NVOCC wishing to invoke an exemption pursuant to this part must indicate that intention to the Commission and to the public by a prominent notice in its rules tariff and bills of lading or equivalent shipping documents."

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–8467 Filed 4–7–11; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

49 CFR Part 8

[Docket No. DOT–OST–1999–6189]

RIN 9991–AA58

Classified Information: Classification/ Declassification/Access; Authority To Classify Information

AGENCY: Office of the Secretary of Transportation (OST), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule delegates various authorities vested in the Secretary of Transportation (Secretary) by Executive Order 13526 to originally classify information as SECRET or CONFIDENTIAL to the Administrator of the Federal Aviation Administration, and to the Assistant Administrator for Security and Hazardous Materials.

DATES: This final rule is effective April 8, 2011.

FOR FURTHER INFORMATION CONTACT: Brett Jortland, Attorney, Office of the General Counsel, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, E-mail: *brett.jortland@dot.gov,* Telephone: (202) 366–9314.

SUPPLEMENTARY INFORMATION: Executive Order 13526 confers upon the Secretary the authority to originally classify information as SECRET or CONFIDENTIAL, with further authorization to designate this authority. Title 49 of the Code of Federal Regulations (CFR), Section 8.11(b)(3) delegates this authority to the Administrator of the Federal Aviation Administration (FAA), and the Assistant Administrator for Civil Aviation Security. As a result of administrative changes within the FAA, the position of the Assistant Administrator for Civil Aviation Security no longer exists. The authority exercised by that position has been transferred to the Assistant Administrator for Security and Hazardous Materials, thus necessitating a change in the language of § 8.11(b)(3) to reflect the proper office for designation of this authority.

In addition, following the creation of the Department of Homeland Security, and the transfer of the United States Coast Guard from DOT to the Department of Homeland Security, the delegation of authority from the Secretary to the United States Coast Guard is hereby removed and the section is renumbered accordingly.

Since these amendments relate to departmental management, organization, procedure, and practice, notice and comment are unnecessary under 5 U.S.C. 553(b). Further, since these amendments expedite DOT's ability to meet the statutory intent of the applicable laws and regulations covered by this delegation, the Secretary finds good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

Regulatory Impact and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

The final rule is not considered a significant regulatory action under Executive Order 12866 and DOT Regulatory Policies and Procedures. *See* 44 FR 11034, Feb. 26, 1979. There are no costs associated with this rule.

B. Regulatory Flexibility Act and Executive Order 13272

Because no notice of proposed rulemaking is required for this rule under the Administrative Procedure Act, 5 U.S.C. 553, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. We also do not believe that this rule would impose any costs on small entities because it simply delegates authority from one official to another. Therefore, I certify that this final rule will not have a significant economic impact on a substantial number of small businesses.

C. Paperwork Reduction Act

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

D. Federalism Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States. Therefore, the consultation requirements of Executive Order 13132 do not apply.

E. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian Tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

F. Unfunded Mandates Reform Act of 1995

DOT has determined that the requirements of title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531) do not apply to this rulemaking.

List of Subjects in 49 CFR Part 8

Classified Information (Government agencies), Classification/ Declassification/Access (Government agencies).

The Final Rule

For the reasons set forth in the preamble, OST amends 49 CFR part 8 as follows:

PART 8—[AMENDED]

■ 1. The authority citation for part 8 continues to read as follows:

Authority: E. O. 10450, 3 CFR, 1949–1953 Comp., p. 936; E.O. 12829, 3 CFR, 1993 Comp., p. 570; E.O. 12958, 3 CFR, 1995 Comp., p. 333; E. O. 12968, 3 CFR, 1995 Comp., p. 391.

Subpart B—Classification/ Declassification of Information

§ 8.11 [Amended]

■ 2. Section 8.11 is amended as follows:
■ a. By removing paragraph (b)(2),
■ b. By redesignating paragraphs (b)(3) and (b)(4) as (b)(2) and (b)(3)
■ c. By amending newly designated paragraph (b)(2) by removing the reference "Assistant Administrator for Civil Aviation Security", and by adding in its place, the reference "Assistant Administrator for Security and Hazardous Materials."

Issued in Washington, DC, on March 30, 2011.

Ray LaHood,

Secretary of Transportation.

[FR Doc. 2011–8292 Filed 4–7–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 110325225–1224–02]

RIN 0648–BA96

Pacific Halibut Fisheries; Limited Access for Guided Sport Charter Vessels in Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; interpretation.

SUMMARY: This interpretation clarifies regulations that apply to vessels operating in the guided sport (charter) fishery for halibut in International Pacific Halibut Commission Management Area 2C (Southeast Alaska) and Area 3A (Central Gulf of Alaska). Under regulations implementing the charter halibut limited access program, all vessel operators in Area 2C and Area 3A with charter vessel anglers on board catching and retaining halibut must have a valid charter halibut permit that was issued by NMFS on board the vessel. This interpretation clarifies that a valid charter halibut permit must be on board a vessel when the charter vessel guide on board is being compensated to provide assistance to persons catching and retaining halibut. A charter vessel guide is not required to have a charter halibut permit on board a vessel during a recreational halibut fishing trip on which he or she is not being compensated to provide assistance to persons catching and retaining halibut.

DATES: This rule is effective on April 8, 2011.

ADDRESSES: Electronic copies of this action and other related documents are available from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Rachel Baker, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act) (16 U.S.C. 773 *et seq.*). Sections 773c(a) and (b) of the Halibut Act provide the Secretary of Commerce (Secretary) with general responsibility to carry out the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea and the Halibut Act. Section 773c(c) of the Halibut Act also authorizes the North Pacific Fishery Management Council (Council) to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations. Such Council-developed regulations may be implemented by NMFS only after approval by the Secretary. The Council has exercised this authority in the development of its limited access program for charter vessels in the guided sport fishery, codified at 50 CFR 300.67.

Charter Halibut Limited Access Program

In March 2007, the Council recommended a limited access program for charter vessels in IPHC Regulatory Area 2C and Area 3A. The intent of the program was to manage growth of fishing capacity in the charter sector by limiting the number of charter vessels that may participate in the guided sport fishery for halibut in Areas 2C and 3A. NMFS published a final rule implementing the program on January 5, 2010 (75 FR 554). Under the program, NMFS initially issued a charter halibut permit (CHP) to qualified applicants. A person who was not initially issued a CHP by NMFS may obtain a transferable CHP from another person by submitting a transfer application and meeting CHP transfer requirements. A permit holder may use a CHP on board any vessel that meets Federal and State requirements to operate as a charter vessel in the guided sport fishery for halibut in Areas 2C and 3A.

Beginning February 1, 2011, any person operating a vessel on which charter vessel anglers are catching and retaining halibut in Area 2C or Area 3A is required to have on board the vessel a CHP designated for that area. This requirement is codified in the regulations as a prohibition. The regulation at § 300.66(r) prohibits a person from being an operator of a vessel in Area 2C or Area 3A with one or more charter vessel anglers on board that are catching and retaining halibut without having a valid CHP for the regulatory area in which the vessel is operating.

Interpretation

This interpretation clarifies that a CHP is required to be on board a vessel in Area 2C or Area 3A if both of the following conditions are met: (1) One or more persons on board are catching and retaining halibut, and (2) a charter vessel guide on board the vessel is receiving compensation to assist a person to take, or attempt to take, halibut.

Regulations at § 300.61 include three definitions that are relevant for determining whether a CHP is required to be on board a vessel in Area 2C or Area 3A. These definitions are "charter vessel angler," "charter vessel guide," and "sport fishing guide services." For purposes of regulations at §§ 300.65(d), 300.66, and 300.67:

1. "Charter vessel angler" means a person, paying or non-paying, using the services of the charter vessel guide.

2. "Charter vessel guide" means a person who holds an annual sport guide license issued by the Alaska Department of Fish and Game, or a person who provides sport fishing guide services.

3. "Sport fishing guide services" means assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish by being on board a vessel with such person during any part of a charter vessel fishing trip.

NMFS interprets "services" in the definition of "charter vessel angler" to mean "sport fishing guide services" as defined at § 300.61. Under this interpretation, a person who takes or attempts to take halibut would only be

a charter vessel angler if that person is receiving sport fishing guide services from a charter vessel guide. Section 300.61 defines "sport fishing guide services" as assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish by being on board a vessel with such person during any part of a charter vessel fishing trip. Therefore, a person would be a charter vessel angler only if that person is receiving assistance to catch and retain halibut from a charter vessel guide who is being compensated to assist the person to take or attempt to take halibut.

Compensation is generally defined as something given or received as payment or remuneration, as for a service. For purposes of the definition of "sport fishing guide services" at § 300.61, compensation is not strictly limited to a monetary exchange and can include a trade of goods or services in exchange for taking someone fishing. Therefore, assistance for compensation is not limited to situations where persons are directly compensating someone for sport fishing guide services. The definition of "sport fishing guide services" at § 300.61 does not require any person on board the vessel to be individually compensating the person providing assistance for this definition to be applicable. If the charter vessel guide is compensated in any way to provide assistance, then that charter vessel guide is providing sport fishing guide services under § 300.61.

NMFS recognizes that compensation for assistance can take many forms. For purposes of applying the regulations at §§ 300.61, 300.66, and 300.67, NMFS will evaluate the specific circumstances of a fishing trip to determine if a charter vessel guide is receiving compensation for providing persons with assistance to take or attempt to take halibut.

Effects of This Interpretation

NMFS did not intend for a charter vessel guide's recreational fishing activities in Area 2C and Area 3A to be restricted by the charter halibut limited access program regulations. This interpretation clarifies that the regulation at § 300.66(r) does not require a person holding an annual sport guide license issued by the Alaska Department of Fish and Game, defined as a charter vessel guide at § 300.61, to have a CHP on board the vessel for recreational fishing trips that are not undertaken as part of charter halibut business operations. For example, NMFS recognizes that while a charter vessel guide on board a vessel with friends or family may offer his or her expertise to assist those persons to catch and retain halibut, the charter vessel guide may not be compensated for providing such assistance. Thus, if the charter vessel guide is not compensated for providing sport fishing guide services, as defined at § 300.61, the persons on board the vessel are not charter vessel anglers as defined at § 300.61. If the persons on board are not charter vessel anglers, the fishing trip would not be considered a charter vessel fishing trip.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this interpretation is consistent with the Halibut Act and other applicable law.

This action is administrative in nature and is exempt from the requirement to prepare an environmental assessment in accordance with NAO 216–6 because this interpretive rule will have no effect on the environment.

This interpretive rule has been determined to be not significant for purposes of Executive Order 12866.

The notice and comment requirements and the 30-day delay in the effective date requirements of the Administrative Procedure Act do not apply to this interpretive rule as provided in 5 U.S.C. 553(b)(A) and 5 U.S.C. 553(d)(2).

Authority: 16 U.S.C. 773 *et seq.*

Dated: April 4, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 2011–8431 Filed 4–5–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 68
Friday, April 8, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1463

RIN 0560–AI12

Tobacco Transition Payment Program; Cigar and Cigarette Per Unit Assessments; Correction

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Proposed rule; correction.

SUMMARY: This document contains a correction to the Request for Comments titled "Tobacco Transition Payment Program; Cigar and Cigarette Per Unit Assessments," which was published March 22, 2011. The Commodity Credit Corporation (CCC) is correcting an inaccurate statement about the possible consequences of an alternative assessment methodology.

DATES: We will consider comments that we receive by May 23, 2011.

ADDRESSES: We invite you to submit comments on the Request for Comments, as corrected by this document. In your comment, please specify RIN 0560–AI12 and include the volume, date, and page number (March 22, 2011, 76 FR 15859–15864) of the issue of the **Federal Register** in which the Request for Comments was published. You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Jane Reed, Economic and Policy Analysis Staff, Farm Service Agency, USDA, 1400 Independence Ave, SW., Mail Stop 0515, Washington, DC 20250–0514.

Comments may be inspected at the above address, in room 3722, between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Jane Reed; phone: (202) 720–6782. Persons with disabilities or who require alternative means for communication (Braille, large print, audio tape, *etc.*) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: On March 22, 2011, CCC published a Request for Comments (76 FR 15859–15864) requesting comments about the calculation of assessments to fund the Tobacco Transition Payment Program (TTPP) as authorized by the Fair and Equitable Tobacco Reform Act of 2004 (FETRA) (7 U.S.C. 518–519a). CCC needs to correct the information in the Request for Comments to remove inadvertently inaccurate estimates of the impact of an alternative cigar assessment methodology.

The Request for Comments on page 15864, in the first column, contained a paragraph that stated that the possible impact of one alternative might have been a twelve-fold increase with respect to large cigars for 2010, and that the effect of this might have even been greater for previous years because of a recent change in product mix. That paragraph reads as follows:

> But assuming a situation in which there are substantial small cigar marketings in the actual "small cigar" tax category, changing the Step B method would substantially change assessment levels. Even applied to assessment data from the first quarter of 2010, it appears that the alternative method of using cigar subcategories would have increased the large cigar unit assessment as much as 12 times. That difference might actually have been greater before then because in 2010, the shift in market volume from small to large cigars had already begun.

The estimate of the impact of the alternative method is inaccurate; an error was made in the calculations on which this paragraph was based. A recalculation was made using 2006 data. The recalculation demonstrated that had the alternative methodology been in use in 2006, the alternative methodology would have increased the large cigar assessment by roughly 80 percent, not twelve-fold, and would have decreased the small cigars assessment (as "small cigars" are defined for the purposes of excise taxes) by roughly 95 percent. For 2010, it is estimated that there would have been only a slight change in the large cigar assessment if cigar categories were broken out separately at the Step A level. Therefore, this document corrects the Request for Comments by removing the paragraph quoted above that contains the inaccurate estimate of impact.

Signed in Washington, DC, on April 4, 2011.

Carolyn B. Cooksie,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2011–8403 Filed 4–7–11; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0304; Directorate Identifier 2010–NM–103–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 757 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Model 757 airplanes. The existing AD currently requires revising the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness by incorporating new limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. That AD also requires the initial inspection of certain repetitive AWL inspections to phase-in those inspections, and repair if necessary. This proposed AD would require actions that were provided previously as optional actions, and would require a certain initial inspection to be accomplished for a revised AWL. This proposed AD results from a report that an AWL required by the existing AD must be revised. We are proposing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by May 23, 2011.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tak Kobayashi, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; phone: 425–917–6499; fax: 425–917–6590; e-mail: *takahisa.kobayashi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0304; Directorate Identifier 2010–NM–103–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On April 29, 2008, we issued AD 2008–10–11, amendment 39–15517 (73 FR 25974, May 8, 2008), for all Model 757 series airplanes. That AD requires revising the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness by incorporating new limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. That AD also requires the initial inspection of certain repetitive AWL inspections to phase-in those inspections, and repair if necessary. That AD resulted from a design review of the fuel tank systems. We issued that AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2008–10–11, we received a report from the manufacturer that AWL No. 28–AWL–03, as specified in Boeing Temporary Revision (TR) 09–008, dated March 2008, contained incorrect information. Boeing TR 09–008 was published as Section 9 of the Boeing 757 Maintenance Planning Data (MPD) Document, D622N001–9, Revision March 2008, and was referenced by AD 2008–10–11. Use of that AWL may result in not detecting defects in the fuel quantity indicating system (FQIS) wiring shield. Boeing issued Boeing TR 09–010, dated July 2010, which was published as Section 9 of the Boeing 757 MPD Document, D622N001–9, Revision July 2010. That document also revises other AWLs referenced by AD 2008–10–11.

Since we issued that AD, we have also determined that it is necessary to clarify the AD's intended effect on spare and on-airplane fuel tank system components, regarding the use of maintenance manuals and instructions for continued airworthiness.

Section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)) specifies the following:

> No person may operate an aircraft for which a manufacturer's maintenance manual or instructions for continued airworthiness has been issued that contains an airworthiness limitation section unless the mandatory * * * procedures * * * have been complied with.

Critical design configuration control limitations (CDCCLs) are airworthiness limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration changes that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection.

Some operators have questioned whether existing components affected by the new CDCCLs must be reworked. We did not intend for the AD to retroactively require rework of components that had been maintained using acceptable methods before the effective date of the AD. Owners and operators of the affected airplanes therefore are not required to rework affected components identified as airworthy or installed on the affected airplanes before the required revisions of the maintenance program. But once the CDCCLs are incorporated into the maintenance program, future maintenance actions on components must be done in accordance with those CDCCLs.

Explanation of Changes to AD 2008–10–11

AD 2008–10–11 allowed the inclusion of AWLs No. 28–AWL–25 and 28–AWL–26 as an optional action. We have determined that those AWLs must be required. We have added that requirement in paragraph (l) of this proposed AD to require those AWLs and paragraphs (n) and (o) of this proposed AD to clarify the required compliance times for those AWLs.

We have removed the "Service Information" reference paragraph from this proposed AD. That paragraph was identified as paragraph (f) in AD 2008–10–11. Instead, we have provided the full service information citations throughout this NPRM.

AD 2008–10–11 allowed the use of alternative inspections, intervals, or CDCCLs if they are part of a later revision of Boeing TR 09–008, dated

March 2008, to Section 9 of the Boeing 757 MPD Document, D622N001–9. AD 2008–10–11 also allowed the use of later revisions of Section 9 of the Boeing 757 MPD Document, D622N001–9. Those provisions have been removed from this proposed AD. We have removed the references to "a later revision" or "later FAA-approved revisions" of specific service documents to be consistent with FAA policy and with Office of the Federal Register regulations for approving materials that are incorporated by reference. Affected operators, however, may request approval to use a later revision or an alternative CDCCL, inspection, or interval that is part of a later revision of the referenced service documents as an alternative method of compliance, under the provisions of paragraph (u) of this AD.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2008–10–11 and would retain the requirements of the existing AD with revised service information. This proposed AD would also require actions that were previously provided as optional actions in the existing AD.

Costs of Compliance

There are about 990 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
AWLs revision (required by AD 2008–10–11)	8	$85	$680	639	$434,520
Inspections (required by AD 2008–10–11)	8	85	680	639	434,520
AWLs revision (new proposed action)	1	85	85	639	54,315

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–15517 (73 FR 25974, May 8, 2008) and adding the following new AD:

The Boeing Company: Docket No. FAA–2011–0304; Directorate Identifier 2010–NM–103–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by May 23, 2011.

Affected ADs

(b) This AD supersedes AD 2008–10–11, Amendment 39–15517. Certain requirements of this AD terminate certain requirements of AD 2008–11–07, Amendment 39–15529; AD 2008–06–03, Amendment 39–15415; and AD 2009–06–20, Amendment 39–15857.

Applicability

(c) This AD applies to all The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections) and/or Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and/or CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval of an alternative method of compliance (AMOC) according to paragraph (u) of this AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Unsafe Condition

(e) This AD results from a design review of the fuel tank systems. The Federal Aviation Administration is issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel

vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2008–10–11, With Revised Service Information

Revision of Airworthiness Limitations (AWLs) Section

(g) Before December 16, 2008, revise the AWLs section of the Instructions for Continued Airworthiness (ICA) by incorporating the information in the subsections specified in paragraphs (g)(1) through (g)(3) of this AD into the MPD; except that the initial inspections specified in Table 1 of this AD must be done at the compliance times specified in Table 1. Accomplishing the requirements of paragraph (l) of this AD terminates the requirements of this paragraph.

(1) Subsection E, "AIRWORTHINESS LIMITATIONS—FUEL SYSTEMS," of Boeing Temporary Revision (TR) 09–008, dated March 2008, to Section 9 of the Boeing 757 Maintenance Planning Data (MPD) Document, D622N001–9.

(2) Subsection F, "PAGE FORMAT: SYSTEMS AIRWORTHINESS LIMITATIONS," of Boeing TR 09–008, dated March 2008, to Section 9 of the Boeing 757 MPD Document, D622N001–9.

(3) Subsection G, "AIRWORTHINESS LIMITATIONS—FUEL SYSTEM AWLs," AWLs No. 28–AWL–01 through No. 28–AWL–24 inclusive, of Boeing TR 09–008, dated March 2008, to Section 9 of the Boeing 757 MPD Document, D622N001–9. As an optional action, AWLs No. 28–AWL–25 and No. 28–AWL–26, as identified in Subsection G of Boeing TR 09–008, dated March 2008, to Section 9 of the Boeing 757 MPD Document, D622N001–9, also may be incorporated into the AWLs section of the ICA.

Initial Inspections and Repair

(h) Do the inspections specified in Table 1 of this AD at the compliance time identified in Table 1 of this AD, and repair any discrepancy, in accordance with Subsection G of Boeing TR 09–008, dated March 2008, or Boeing TR 09–010, dated July 2010, to Section 9 of the Boeing 757 MPD Document, D622N001–9, except as required by paragraph (m) of this AD. The repair must be done before further flight. Accomplishing the inspections identified in Table 1 of this AD as part of a maintenance program before the applicable compliance time specified in Table 1 of this AD constitutes compliance with the requirements of this paragraph. After the effective date of this AD, only Boeing TR 09–010, dated July 2010, to Section 9 of the Boeing 757 Maintenance Planning Data (MPD) Document, D622N001–9, may be used.

TABLE 1—INITIAL INSPECTIONS

AWL No.	Description	Compliance time (whichever occurs later)	
		Threshold	Grace period
(1) 28–AWL–01	A detailed inspection of external wires over the center fuel tank for damaged clamps, wire chafing, and wire bundles in contact with the surface of the center fuel tank.	Within 120 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.	Within 72 months after June 12, 2008 (the effective date of AD 2008–10–11).
(2) 28–AWL–03	A special detailed inspection of the lightning shield to ground termination on the out-of-tank fuel quantity indicating system to verify functional integrity.	Within 120 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.	Within 24 months after June 12, 2008.
(3) 28–AWL–14	A special detailed inspection of the fault current bond of the fueling shutoff valve actuator of the center wing tank to verify electrical bond.	Within 120 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.	Within 60 months after June 12, 2008.

Note 2: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

Note 3: For the purposes of this AD, a special detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. The examination is likely to make extensive use of specialized inspection techniques and/or equipment. Intricate cleaning and substantial access or disassembly procedure may be required."

No Alternative Inspections, Inspection Intervals, or CDCCLs

(i) After accomplishing the actions specified in paragraphs (g) and (h) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (u) of this AD.

Credit for Actions Done According to Previous Revisions of the MPD

(j) Actions done before June 12, 2008, in accordance with Section 9 of the Boeing 757 MPD Document, D622N001–9, Revision March 2006; Revision October 2006; Revision January 2007; or Revision November 2007; are acceptable for compliance with the corresponding requirements of paragraphs (g) and (h) of this AD.

Terminating Action for AD 2008–06–03, Amendment 39–15415

(k) Incorporating AWLs No. 28–AWL–23, No. 28–AWL–24, and No. 28–AWL–25 into the AWLs section of the ICA in accordance with paragraph (g)(3) of this AD or the maintenance program in accordance with paragraph (l)(3) of this AD terminates the action required by paragraph (h)(2) of AD 2008–06–03. After the effective date of this AD, only paragraph (l)(3) of this AD may be used.

New Requirements of This AD

Revision of Airworthiness Limitations (AWLs) Section

(l) Within 6 months after the effective date of this AD, revise the maintenance program by incorporating the information in the subsections specified in paragraphs (l)(1) through (l)(3) of this AD. Accomplishing the actions required by this paragraph terminates the requirements of paragraph (g) of this AD.

(1) Subsection E, "AIRWORTHINESS LIMITATIONS—FUEL SYSTEMS," of Boeing TR 09–010, dated July 2010, to Section 9 of the Boeing 757 MPD Document, D622N001–9.

(2) Subsection F, "PAGE FORMAT: FUEL SYSTEMS AIRWORTHINESS LIMITATIONS," of Boeing TR 09–010, dated July 2010, to Section 9 of the Boeing 757 MPD Document, D622N001–9.

(3) Subsection G, "AIRWORTHINESS LIMITATIONS—FUEL SYSTEM AWLs," AWLs No. 28–AWL–01 through No. 28–AWL–26 inclusive, of Boeing TR 09–010, dated July 2010, to Section 9 of the Boeing 757 MPD Document, D622N001–9.

Compliance Time for AWL No. 28–AWL–03

(m) The initial compliance time for AWL No. 28–AWL–03 of Boeing TR 09–010, dated July 2010, to Section 9 of Boeing 757 MPD Document, D622N001–9, is within 120 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, or within 24 months after the effective date of this AD, whichever occurs later. Accomplishing the actions required by this paragraph terminates the requirements of paragraph (h)(2) of this AD.

Initial Inspection Compliance Times for AWL No. 28–AWL–25 and 28–AWL–26

(n) The initial inspection compliance time for AWL No. 28–AWL–25 of Boeing TR 09–010, dated July 2010, to Section 9 of Boeing 757 MPD Document, D622N001–9, is within 72 months after accomplishing Boeing Service Bulletin 757–28A0088.

(o) The initial inspection compliance time for AWL No. 28–AWL–26 of Boeing TR 09–010, dated July 2010, to Section 9 of Boeing 757 MPD Document, D622N001–9, is within 12 months after accomplishing Boeing Service Bulletin 757–28A0105.

No Alternative Inspections, Inspection Intervals, or CDCCLs

(p) After accomplishing the actions specified in paragraph (l) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (u) of this AD.

Terminating Action for AD 2008–11–07, Amendment 39–15529

(q) Incorporating AWLs No. 28–AWL–20 and No. 28–AWL–26 into the maintenance program in accordance with paragraph (l)(3) of this AD terminates the actions required by paragraphs (j) and (m) of AD 2008–11–07.

Terminating Action for AD 2009–06–20, Amendment 39–15857

(r) Incorporating AWL No. 28–AWL–22 into the maintenance program in accordance with paragraph (l)(3) of this AD terminates the actions required by paragraph (h) of AD 2009–06–20.

Credit for Actions Accomplished in Accordance With Previous Service Information

(s) Actions done before the effective date of this AD in accordance with Section 9 of the Boeing 757 MPD Document, D622N001–9, Revision December 2008, is acceptable for compliance with the corresponding requirements of this AD.

(t) Actions done before the effective date of this AD in accordance with Subsection G of Boeing TR 09–008, dated March 2008, to Section 9 of the Boeing 757 MPD Document, D622N001–9, is acceptable for compliance with the requirements of paragraphs (n) and (o) of this AD.

Explanation of CDCCL Requirements

Note 4: Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before the revision of the maintenance program, as required by paragraphs (g) and (l) of this AD, do not need to be reworked in accordance with the CDCCLs. However, once the maintenance program has been revised, future maintenance actions on these components must be done in accordance with the CDCCLs.

Alternative Methods of Compliance (AMOCs)

(u)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) AMOCs approved previously for AD 2008–10–11 are approved as AMOCs for the corresponding provisions of this AD.

Related Information

(v) For more information about this AD, contact Tak Kobayashi, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; phone: 425–917–6499; fax: 425–917–6590; e-mail: *takahisa.kobayashi@faa.gov.*

(w) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 25, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–8407 Filed 4–7–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0305; Directorate Identifier 2010–NM–186–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–214, –232, and –233 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

* * * * *

Results from a design review done by AIRBUS for documentation update have revealed that, on post-mod 38310 A320 aeroplanes only, in case of emergency electrical configuration combined with a Green and Yellow hydraulic system loss, during landing phase (nose landing gear extended), the roll control would only be provided by the left aileron.

This condition, if not corrected, could lead to an asymmetrical landing configuration, resulting in reduced control of the aeroplane.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by May 23, 2011.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac

Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0305; Directorate Identifier 2010–NM–186–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0149, dated July 21, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> In 2007, Airbus modification 38310 was introduced in production to simplify the ELAC2 [elevator aileron computer] and Trimmable Horizontal Stabiliser (THS) Motor 1 stand by power supply logic.
>
> Results from a design review done by AIRBUS for documentation update have revealed that, on post-mod 38310 A320 aeroplanes only, in case of emergency electrical configuration combined with a Green and Yellow hydraulic system loss, during landing phase (nose landing gear extended), the roll control would only be provided by the left aileron.
>
> This condition, if not corrected, could lead to an asymmetrical landing configuration, resulting in reduced control of the aeroplane.
>
> For the reasons described above, this [EASA] AD requires a modification of the electrical installation of ELAC2 and THS Motor 1 power supply, restoring the aeroplane to the pre-mod 38310 configuration.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A320–27–1199, Revision 02, including Appendix 01, dated September 20, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 666 products of U.S. registry. We also estimate that it would take about 35 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $3,370 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $4,225,770, or $6,345 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Airbus: Docket No. FAA–2011–0305; Directorate Identifier 2010–NM–186–AD.

Comments Due Date

(a) We must receive comments by May 23, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A320–214, -232, and -233 airplanes, all manufacturer serial numbers on which Airbus modification 38310 has been accomplished in production; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight Controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

* * * * *

Results from a design review done by AIRBUS for documentation update have revealed that, on post-mod 38310 A320 aeroplanes only, in case of emergency electrical configuration combined with a Green and Yellow hydraulic system loss, during landing phase (nose landing gear extended), the roll control would only be provided by the left aileron.

This condition, if not corrected, could lead to an asymmetrical landing configuration, resulting in reduced control of the aeroplane.

* * * * *

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Actions

(g) Within 24 months after the effective date of this AD, modify the electrical installation of the elevator aileron computer and trimmable horizontal stabilizer motor 1 power supply, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A320–27–1199, Revision 02, dated September 20, 2010.

Credit for Actions Accomplished in Accordance With Previous Service Information

(h) Modifications done before the effective date of this AD in accordance with Airbus Service Bulletin A320–27–1199, Revision 01, dated March 4, 2010, are acceptable for compliance with the requirements of paragraph (g) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(i) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, sent it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

Related Information

(j) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0149, dated July 21, 2010; and Airbus Mandatory Service Bulletin A320–27–1199, Revision 02, dated September 20, 2010; for related information.

Issued in Renton, Washington, on March 25, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–8409 Filed 4–7–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0306; Directorate Identifier 2010–NM–176–AD]

RIN 2120–AA64

Airworthiness Directives; BAE SYSTEMS (Operations) Limited Model 4101 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

* * * BAE Systems (Operations) Ltd has issued Revision 33 of the AMM [airplane maintenance manual] to amend Chapter 05–10–10 by adding one new Structurally Significant Item (SSI) and increasing the repeat inspection period on another SSI. Failure to comply with this revision constitutes an unsafe condition.

The unsafe condition is failure of certain structurally significant items, including the main landing gear and the nose landing gear, which could result in reduced structural integrity of the airplane; and fuel vapor ignition sources, which could result in a fuel tank explosion and consequent loss of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by May 23, 2011.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–

30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact BAE SYSTEMS (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; e-mail *RApublications@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0306; Directorate Identifier 2010–NM–176–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On April 27, 2009, we issued AD 2009–10–02, Amendment 39–15897 (74 FR 21246, May 7, 2009). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2009–10–02, we have determined that new or more restrictive limitations are necessary to adequately address the identified unsafe condition.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued Airworthiness Directive 2010–0098, dated May 27, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> The Jetstream J41 Aircraft Maintenance Manual (AMM), includes the following chapters:
>
> —05–10–10 "Airworthiness Limitations",
> —05–10–20 "Certification Maintenance Requirements", and,
> —05–10–30 "Critical Design Configuration Control Limitations (CDCCL)—Fuel System"
>
> Compliance with these chapters has been identified as mandatory actions for continued airworthiness and EASA AD 2009–0052 was issued to require operators to comply with those instructions.
>
> Since the issuance of that AD, BAE Systems (Operations) Ltd has issued Revision 33 of the AMM to amend Chapter 05–10–10 by adding one new Structurally Significant Item (SSI) and increasing the repeat inspection period on another SSI. Failure to comply with this revision constitutes an unsafe condition.
>
> For the reasons described above, this [EASA] AD, which supersedes EASA AD 2009–0052, requires the implementation of the new or more restrictive maintenance requirements and/or airworthiness limitations as specified in the defined parts of Chapter 05 of the AMM at Revision 33.

The unsafe condition is failure of certain structurally significant items, including the main landing gear and the nose landing gear, which could result in reduced structural integrity of the airplane; and fuel vapor ignition sources, which could result in a fuel tank explosion and consequent loss of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

BAE SYSTEMS (Operations) Limited has issued Subjects 05–10–00, 05–10–10, 05–10–20, and 05–10–30 of Chapter 05 of Jetstream Series 4100 Aircraft Maintenance Manual, Revision 33, dated February 15, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 3 products of U.S. registry.

The actions that are required by AD 2009–10–02 and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $85 per product.

We estimate that it would take about 1 additional work-hour per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $255, or $85 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15897 (74 FR 21246, May 7, 2009) and adding the following new AD:

BAE SYSTEMS (Operations) Limited: Docket No. FAA–2011–0306; Directorate Identifier 2010–NM–176–AD.

Comments Due Date

(a) We must receive comments by May 23, 2011.

Affected ADs

(b) This AD supersedes AD 2009–10–02, Amendment 39–15897.

Applicability

(c) This AD applies to all BAE SYSTEMS (Operations) Limited Model 4101 airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections) and/or Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and/or CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval of an alternative method of compliance (AMOC) according to paragraph (k) of this AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 05.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

* * * BAE Systems (Operations) Ltd has issued Revision 33 of the AMM [airplane maintenance manual] to amend Chapter 05–10–10 by adding one new Structurally Significant Item (SSI) and increasing the repeat inspection period on another SSI. Failure to comply with this revision constitutes an unsafe condition.

The unsafe condition is failure of certain structurally significant items, including the main landing gear and the nose landing gear, which could result in reduced structural integrity of the airplane; and fuel vapor ignition sources, which could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2009–10–02

Revise Airworthiness Limitations Section (AWL) of Instructions for Continued Airworthiness

(g) Within 90 days after June 11, 2009 (the effective date of AD 2009–10–02): Revise the AWL section of the Instructions for Continued Airworthiness by incorporating the instructions of Subjects 05–10–10, "Airworthiness Limitations," 05–10–20, "Certification Maintenance Requirements," and 05–10–30, "Critical Design Configuration Control Limitations (CDCCL)—Fuel System," of the BAE Systems (Operations) Limited Jetstream Series 4100 Airplane Maintenance Manual (AMM), Revision 31, dated February 15, 2009. Thereafter, except as provided in paragraph (k) of this AD, no alternative replacement times or inspection intervals may be approved for any affected component. Doing the actions required by paragraph (i) of this AD terminates the requirements of this paragraph.

(h) Where paragraph 2.A.(2) of Subject 05–10–10 of the BAE Systems (Operations) Limited Jetstream Series 4100 AMM, Revision 31, dated February 15, 2009, specifies that certain landing gear units "must be removed before 31st March 2008," this AD requires compliance within 60 days after June 11, 2009.

New Requirements of This AD

Maintenance Program Revision

(i) Within 90 days after the effective date of this AD: Revise the maintenance program by incorporating Subject 05–10–10, "Airworthiness Limitations Description and Operation"; Subject 05–10–20, "Certification Maintenance Requirements Description and Operation"; and Subject 05–10–30, "Critical Design Configuration Control Limitations (CDCCL)—Fuel System Description and Operation"; of Chapter 05 of the BAE Systems (Operations) Limited Jetstream Series 4100 AMM, Revision 33, dated February 15, 2010. Doing the actions required by this paragraph terminates the requirements of paragraph (g) of this AD. The initial compliance times for the tasks are at the applicable times specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD.

(1) For replacement tasks of life limited parts specified in Subject 05–10–10, "Airworthiness Limitations Description and Operation," of Chapter 05 of the BAE Systems (Operations) Limited Jetstream Series 4100 AMM, Revision 33, dated February 15, 2010: Prior to the applicable flight cycles (landings) or flight hours (flying hours) on the part specified in the "Mandatory Life Limits" column in Subject 05–10–10, or within 90 days after the effective date of this AD, whichever occurs later.

(2) For structurally significant item tasks specified in Subject 05–10–10, "Airworthiness Limitations Description and Operation," of Chapter 05 of the BAE Systems (Operations) Limited Jetstream Series 4100 AMM, Revision 33, dated February 15, 2010: Prior to the accumulation of the applicable flight cycles specified in the "Initial Inspection" column in Subject 05–10–10, or within 90 days after the effective date of this AD, whichever occurs later.

(3) For certification maintenance requirements tasks specified in Subject 05–10–20, "Certification Maintenance Requirements Description and Operation," of Chapter 05 of the BAE Systems (Operations) Limited Jetstream Series 4100 AMM, Revision 33, dated February 15, 2010: Prior to the accumulation of the applicable flight hours specified in the "Time Between Checks" column in Subject 05–10–20, or within 90 days after the effective date of this AD, whichever occurs later; except for tasks that specify "first flight of the day" in the "Time Between Checks" column in Subject 05–10–20, the initial compliance time is the first flight of the next day after doing the revision required by paragraph (i) of this AD, or within 90 days after the effective date of this AD, whichever occurs later.

No Alternative Actions, Intervals, and/or Critical Design Configuration Control Limitations (CDCCLs)

(j) After accomplishing the revision required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections), intervals, and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: Although EASA Airworthiness Directive 2010–0098, dated May 27, 2010, specifies both revising the maintenance program to include limitations, and doing certain repetitive actions (*e.g.,* inspections) and/or maintaining Critical Design Configuration Control Limitations (CDCCLs), this AD only requires the revision. Requiring a revision of the maintenance program, rather than requiring individual repetitive actions and/or maintaining CDCCLs, requires operators to record AD compliance only at the time the revision is made. Repetitive actions and/or maintaining CDCCLs specified in the airworthiness limitations must be complied with in accordance with 14 CFR 91.403(c).

Other FAA AD Provisions

(k) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

Related Information

(l) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0098, dated May 27, 2010; Subjects 05–10–10, "Airworthiness Limitations," 05–10–20, "Certification Maintenance Requirements," and 05–10–30, "Critical Design Configuration Control Limitations (CDCCL)—Fuel System," of the BAE Systems (Operations) Limited Jetstream Series 4100 AMM, Revision 31, dated February 15, 2009; and Subjects 05–10–00, "Time Limits Description and Operation," 05–10–10, "Airworthiness Limitations Description and Operation," 05–10–20, "Certification Maintenance Requirements Description and Operation," and 05–10–30, "Critical Design Configuration Control Limitations (CDCCL)—Fuel System Description and Operation," of Chapter 05 of the BAE Systems (Operations) Limited Jetstream Series 4100 AMM, Revision 33, dated February 15, 2010; for related information.

Issued in Renton, Washington, on March 30, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–8410 Filed 4–7–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0307; Directorate Identifier 2010–NM–111–AD]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aerosystems Model SAAB 2000 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

* * * * *

A report has been received of an incident where one of the two bolts attaching the actuator mounting bracket to the MLG [main landing gear] Shock Strut was found loose, leading to failure of the other attachment bolt, subsequently resulting in failure of the bracket.

This condition, if not detected and corrected, could prevent the MLG to extend to the full down-and-locked position, possibly resulting in MLG collapse upon landing or during roll-out, with consequent damage to the aeroplane and injury to the occupants.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by May 23, 2011.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Saab AB, Saab Aerosystems, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; e-mail *saab2000.techsupport@saabgroup.com;* Internet *http://www.saabgroup.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will

be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0307; Directorate Identifier 2010–NM–111–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0069, dated April 14, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> A report has been received of an incident where one of the two bolts attaching the actuator mounting bracket to the MLG Shock Strut was found loose, leading to failure of the other attachment bolt, subsequently resulting in failure of the bracket.
>
> This condition, if not detected and corrected, could prevent the MLG to extend to the full down-and-locked position, possibly resulting in MLG collapse upon landing or during roll-out, with consequent damage to the aeroplane and injury to the occupants.
>
> To correct this potentially unsafe condition, SAAB has published Service Bulletin (SB) 2000–32–073, describing a [detailed] inspection of the attachment bolts [and nuts] to detect any loose bolts [and nuts], follow-up corrective action(s), depending on findings, and the installation of the correct number of washers.
>
> For the reasons described above, this EASA AD requires the accomplishment of the actions described in SAAB SB 2000–32–073.

Required actions, if any loose parts are found, include replacing the bolt with a new bolt, and then doing a detailed inspection of the bolts for uniform or fretting corrosion; a detailed inspection of the actuator mounting bracket and shock struts for damage, cracks, and signs of corrosion; and doing corrective actions if necessary. Corrective actions include removing corrosion, replacing affected bolts with new bolts, tightening loose nuts, repairing, and installing the correct number of washers. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Saab has issued Service Bulletin 2000–32–073, Revision 01, dated October 20, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 8 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $1,039 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $8,992, or $1,124 per product.

In addition, we estimate that any necessary follow-on actions would take about 10 work-hours and require parts costing $1,039, for a cost of $1,889 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with

this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Saab AB, Saab Aerosystems: Docket No. FAA–2011–0307; Directorate Identifier 2010–NM–111–AD.

Comments Due Date

(a) We must receive comments by May 23, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Saab AB, Saab Aerosystems Model SAAB 2000 airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

A report has been received of an incident where one of the two bolts attaching the actuator mounting bracket to the MLG [main landing gear] Shock Strut was found loose, leading to failure of the other attachment bolt, subsequently resulting in failure of the bracket.

This condition, if not detected and corrected, could prevent the MLG to extend to the full down-and-locked position, possibly resulting in MLG collapse upon landing or during roll-out, with consequent damage to the aeroplane and injury to the occupants.

* * * * *

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection

(g) Within 12 months after the effective date of this AD, do a detailed inspection for any loose top bolt and nut of the shock strut actuator mounting bracket of both the left-hand and right-hand main landing gear (MLG), in accordance with paragraph 2.B. of the Accomplishment Instructions of Saab Service Bulletin 2000–32–073, Revision 01, dated October 20, 2009.

Corrective Action

(h) If any loose bolt or nut is found during the inspection required by paragraph (g) of this AD, before further flight, replace the bolt with a new bolt and accomplish paragraphs (h)(1) and (h)(2) of this AD, in accordance with paragraph 2.C. of the Accomplishment Instructions Saab Service Bulletin 2000–32–073, Revision 01, dated October 20, 2009.

(1) Do a detailed inspection of the bottom bolts for uniform or fretting corrosion. If any corrosion is found, before further flight, accomplish all applicable corrective actions, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–32–073, Revision 01, dated October 20, 2009.

(2) Do a detailed inspection for damage, cracks, and other signs of deterioration of the actuator mounting bracket and shock strut. If signs of damage, cracks, or other signs of deterioration are found on the actuator mounting bracket or the shock strut, before further flight, repair in accordance with a method approved by the FAA or the European Aviation Safety Agency (EASA) (or its delegated agent).

(i) Within 12 months after the effective date of this AD, unless already accomplished in accordance with paragraph (h) of this AD, install the correct number of washers for both the top and bottom bolts of the shock strut actuator mounting bracket of both MLG, in accordance with paragraph 2.C.of the Accomplishment Instructions of Saab Service Bulletin 2000–32–073, Revision 01, dated October 20, 2009.

Credit for Actions Accomplished in Accordance With Previous Service Information

(j) Actions accomplished before the effective date of this AD in accordance with Saab Service Bulletin 2000–32–073, dated June 26, 2009, are considered acceptable for compliance with the corresponding actions specified in this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(k) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227-1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

Related Information

(l) Refer to MCAI EASA Airworthiness Directive 2010–0069, dated April 14, 2010; and Saab Service Bulletin 2000–32–073, Revision 01, dated October 20, 2009; for related information.

Issued in Renton, Washington, on March 31, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–8412 Filed 4–7–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0308; Directorate Identifier 2010–NM–233–AD]

RIN 2120–AA64

Airworthiness Directives; 328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 and –300 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During maintenance, it has been discovered that at the installation of the fixation brackets for rudder spring tabs and trim tabs an incorrect installation of the fixation brackets may have occurred. * * *

If the orientation of the fixation bracket is reversed or upside down the screws may not reach into the helicoil thread to a sufficient depth.

An incorrect installation, if not detected and corrected, could lead to an in-flight failure of the fixation brackets for rudder spring tabs and trim tabs resulting in and reduced control of the aeroplane.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by May 23, 2011.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey, Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact 328 Support Services GmbH, Global Support Center, P.O. Box 1252, D–82231 Wessling, Federal Republic of Germany; telephone +49 8153 88111 6666; fax +49 8153 88111 6565; e-mail *gsc.op@328support.de;* Internet *http://www.328support.de.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0308; Directorate Identifier 2010–NM–233–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0134, dated June 30, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

During maintenance, it has been discovered that at the installation of the fixation brackets for rudder spring tabs and trim tabs an incorrect installation of the fixation brackets may have occurred. It is possible that the fixation bracket assembly may be incorrectly orientated and as a result the position of the helicoil inserts on the fixation bracket may be incorrect.

If the orientation of the fixation bracket is reversed or upside down the screws may not reach into the helicoil thread to a sufficient depth.

An incorrect installation, if not detected and corrected, could lead to an in-flight failure of the fixation brackets for rudder spring tabs and trim tabs resulting in and reduced control of the aeroplane.

To address this potential unsafe condition, the TC [type certificate] holder has developed a one-time inspection to detect and correct any incorrect installations of the fixation brackets for rudder spring tabs and trim tabs.

For the reasons described above, this AD requires a one-time [detailed] inspection of all rudder trim- and spring tab fixation brackets, the correction of any parts that are incorrectly installed and the reporting of all findings to the TC holder. This AD is considered to be an interim action and an improved design bracket attachment is expected to be developed.

The detailed inspection includes determining if the helicoil inserts of the rudder trim tab and spring tab fixation brackets are correctly oriented and are facing the fitting surface, and if not, inspecting the fittings and helicoil inserts for correct installation. The corrective actions include re-orienting the fittings and helicoil inserts, and replacing the fitting with a serviceable one. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

328 Support Services has issued Service Bulletins SB–328–55–493 (for Model 328–100 airplanes) and SB–328J–55–245 (for Model 328–300 airplanes), both dated April 21, 2010, both including a Compliance Report. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 55 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor

rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $9,350, or $170 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH): Docket No. FAA–2011–0308; Directorate Identifier 2010–NM–233–AD.

Comments Due Date

(a) We must receive comments by May 23, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to 328 Support Services GmbH (Type Certificate previously held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 and –300 airplanes, certificated in any category, all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 55: Stabilizers.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During maintenance, it has been discovered that at the installation of the fixation brackets for rudder spring tabs and trim tabs an incorrect installation of the fixation brackets may have occurred. * * *

If the orientation of the fixation bracket is reversed or upside down the screws may not reach into the helicoil thread to a sufficient depth.

An incorrect installation, if not detected and corrected, could lead to an in-flight failure of the fixation brackets for rudder spring tabs and trim tabs resulting in and reduced control of the aeroplane.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection

(g) Within 400 flight hours after the effective date of this AD, do a detailed inspection to determine if the fixation brackets for the rudder spring tabs and trim tabs are installed correctly, in accordance with the Accomplishment Instructions of 328 Support Services Service Bulletin SB–328–55–493, dated April 21, 2010 (for Model 328–100 airplanes); or SB–328J–55–245, dated April 21, 2010 (for Model 328–300 airplanes).

Corrective Action

(h) If, during the inspection required by paragraph (g) of this AD, any incorrect installation of the fixation brackets for rudder spring tabs and trim tabs is detected, before further flight, correct the installation of the fixation brackets for rudder spring tabs and trim tabs, in accordance with the Accomplishment Instructions of 328 Support Services Service Bulletin SB–328–55–493, dated April 21, 2010 (for Model 328–100 airplanes); or SB–328J–55–245, dated April 21, 2010 (for Model 328–300 airplanes).

Reporting

(i) Within 30 days after the inspection required by paragraph (g) of this AD, or within 30 days after the effective date of this AD, whichever occurs later: Send the inspection report to 328 Support Services GmbH by using the Compliance Report attached to 328 Support Services Service Bulletin SB–328–55–493, dated April 21, 2010 (for Model 328–100 airplanes); or SB–328J–55–245, dated April 21, 2010 (for Model 328–300 airplanes). Send the report by mail or fax to: Attention: Dept. C, 328 Support Services GmbH, Customer Services, P.O. Box 1252, D–82231 Wessling, Federal Republic of Germany; fax +49 (0) 8153 88111–6565.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(j) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch/ACO, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* A Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of

the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

Related Information

(k) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0134, dated June 30, 2010; and 328 Support Services Service Bulletins SB–328–55–493 and SB–328J–55–245, both dated April 21, 2010; for related information.

Issued in Renton, Washington, on March 31, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–8414 Filed 4–7–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0309; Directorate Identifier 2010–NM–255–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes); and Model A310 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A specific failure case of the THSA [trimmable horizontal stabilizer actuator] upper primary attachment, which may result in a loading of the upper secondary attachment, has been identified by analysis.

Primary load path failure can be caused by bearing migration from the upper attachment gimbal by failure or loss of a retention bolt.

In case of failure of the THSA upper primary attachment, the THSA upper secondary attachment would engage. Because the upper attachment secondary load path can only withstand the loads for a limited period of time, the condition where it would be engaged could lead, if not detected, to the failure of the secondary load path, which would likely result in loss of control of the aeroplane.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by May 23, 2011.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0309; Directorate Identifier 2010–NM–255–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0224, dated November 4, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

A specific failure case of the THSA [trimmable horizontal stabilizer actuator] upper primary attachment, which may result in a loading of the upper secondary attachment, has been identified by analysis.

Primary load path failure can be caused by bearing migration from the upper attachment gimbal by failure or loss of a retention bolt.

In case of failure of the THSA upper primary attachment, the THSA upper secondary attachment would engage. Because the upper attachment secondary load path can only withstand the loads for a limited period of time, the condition where it would be engaged could lead, if not detected, to the failure of the secondary load path, which would likely result in loss of control of the aeroplane.

For the reasons explained above, this AD requires installation of three secondary retention plates for the gimbal bearings on the THSA upper primary attachment.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletins A300–27–6066 (for Model A300–600 series airplanes) and A310–27–2103 (for Model A310 series

airplanes), both dated June 10, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect 215 products of U.S. registry. We also estimate that it would take 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $3,021 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $722,615, or $3,361 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Airbus: Docket No. FAA–2011–0309; Directorate Identifier 2010–NM–255–AD.

Comments Due Date

(a) We must receive comments by May 23, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes, Model A300 B4–605R and B4–622R airplanes, Model A300 F4–605R and F4–622R airplanes, and Model A300 C4–605R Variant F airplanes; and Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

A specific failure case of the THSA [trimmable horizontal stabilizer actuator] upper primary attachment, which may result in a loading of the upper secondary attachment, has been identified by analysis.

Primary load path failure can be caused by bearing migration from the upper attachment gimbal by failure or loss of a retention bolt.

In case of failure of the THSA upper primary attachment, the THSA upper secondary attachment would engage. Because the upper attachment secondary load path can only withstand the loads for a limited period of time, the condition where it would be engaged could lead, if not detected, to the failure of the secondary load path, which would likely result in loss of control of the aeroplane.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Installation

(g) Within 30 months after the effective date of this AD, install three retention plates on the THSA upper primary attachment, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–27–6066 (for Model A300–600 series airplanes) or Airbus Mandatory Service Bulletin A310–27–2103 (for Model A310 series airplanes), both dated June 10, 2010.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

Related Information

(i) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0224, dated November 4, 2010; and Airbus Mandatory Service Bulletins A300–27–6066 and A310–27–2103, both dated June 10, 2010.

Issued in Renton, Washington, on March 31, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–8416 Filed 4–7–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION

34 CFR Part 99

RIN 1880–AA86

[Docket ID ED–2011–OM–0002]

Family Educational Rights and Privacy

AGENCY: Office of Management, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations implementing section 444 of the General Education Provisions Act, which is also known as the Family Educational Rights and Privacy Act of 1974, as amended (FERPA). These proposed amendments are necessary to ensure that the Department's implementation of FERPA continues to protect the privacy of education records, as intended by Congress, while allowing for the effective use of data in statewide longitudinal data systems (SLDS) as envisioned in the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Act (COMPETES Act) and furthermore supported under the American Recovery and Reinvestment Act of 2009 (ARRA). Improved access to data contained within an SLDS will facilitate States' ability to evaluate education programs, to build upon what works and discard what does not, to increase accountability and transparency, and to contribute to a culture of innovation and continuous improvement in education. These proposed amendments would enable authorized representatives of State and local educational authorities, and organizations conducting studies, to use SLDS data to achieve these important outcomes while protecting privacy under FERPA through an expansion of the requirements for written agreements and the Department's enforcement mechanisms.

DATES: We must receive your comments on or before May 23, 2011. Comments received after this date will not be considered.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How To Use This Site."

- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to Regina Miles, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: Ellen Campbell, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 260–3887 or via Internet: *FERPA@ed.gov.*

If you use a telecommunications device for the deaf, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing *http://www.regulations.gov.* You may also inspect the comments in person in room 6W243, 400 Maryland Avenue, SW., Washington, DC, 20202 between the hours of 8:30 a.m. and 4 p.m. Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background: On February 17, 2009, the President signed the ARRA (Pub. L.

111–5) into law. The ARRA includes significant provisions relating to the expansion and development of SLDS. Under title XIV of the ARRA, in order for a State to receive funding under the State Fiscal Stabilization Fund program (SFSF), the State's Governor must provide an assurance in the State's application for SFSF funding that the State will establish an SLDS that meets the requirements of section 6401(e)(2)(D) of the COMPETES Act (20 U.S.C. 9871(e)(2)(D)).

With respect to public preschool through grade 12 and postsecondary education, COMPETES requires that the SLDS include: (a) A unique statewide student identifier that, by itself, does not permit a student to be individually identified by users of the system; (b) student-level enrollment, demographic, and program participation information; (c) student-level information about the points at which students exit, transfer in, transfer out, drop out, or complete P–16 education programs; (d) the capacity to communicate with higher education data systems; and (e) a State data audit system assessing data quality, validity, and reliability.

With respect to public preschool through grade 12 education, COMPETES requires that the SLDS include: (a) Yearly test records of individual students with respect to assessments under section 1111(b) of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6311(b)); (b) information on students not tested by grade and subject; (c) a teacher identifier system with the ability to match teachers to students; (d) student-level transcript information, including information on courses completed and grades earned; and (e) student-level college readiness test scores.

With respect to postsecondary education, COMPETES requires that the SLDS include: (a) Information regarding the extent to which students transition successfully from secondary school to postsecondary education, including whether students enroll in remedial coursework; and (b) other information determined necessary to address alignment and adequate preparation for success in postsecondary education.

Separate provisions in title VIII of the ARRA appropriated $250 million for additional grants to State educational agencies (SEAs) under the Statewide Longitudinal Data Systems program, authorized under section 208 of the Educational Technical Assistance Act of 2002 (20 U.S.C. 9601, *et seq.*) to support the expansion of SLDS to include postsecondary and workforce information.

The extent of data sharing contemplated by these and other Federal initiatives prompted the Department to review the impact that its FERPA regulations could have on the development and use of SLDS. FERPA is a Federal law that protects student privacy by prohibiting educational agencies and institutions from having a practice or policy of disclosing personally identifiable information in student education records ("PII") unless a parent or eligible student provides prior written consent or a statutory exception applies. In those circumstances in which educational agencies and institutions may disclose PII to third parties without consent, FERPA and its implementing regulations limit the redisclosure of PII by the recipients, except as set forth in §§ 99.33(c) and (d) and 99.35(c)(2) (*see* 20 U.S.C. 1232g(b)(3) and (b)(4)(B) and §§ 99.33 and 99.35(c)(2)). For example, State and local educational authorities that receive PII without consent from the parent or eligible student under the "audit or evaluation" exception may not make further disclosures of the PII on behalf of the educational agency or institution unless prior written consent from the parent or eligible student is obtained, Federal law specifically authorized the collection of the PII, or a statutory exception applies and the redisclosure and recordation requirements are met (*see* 20 U.S.C. 1232g(b)(3) and (b)(4) and §§ 99.32(b)(2), 99.33(b)(1)), and 99.35(c)).

In light of the ARRA, the Department has conducted a review of its FERPA regulations in 34 CFR part 99, including changes reflected in the final regulations published on December 9, 2008 (73 FR 74806). Further, the Department has reviewed its guidance interpreting FERPA, including statements made in the preamble discussion to the final regulations published on December 9, 2008 (73 FR 74806).

Based on its review, the Department has determined that the Department's December 2008 changes to the FERPA regulations promote the development and expansion of robust SLDS in the following ways:

- Expanding the redisclosure authority in FERPA by amending § 99.35 to permit State and local educational authorities and other officials listed in § 99.31(a)(3) to make further disclosures of personally identifiable information from education records, without the consent of parents or eligible students, on behalf of the educational agency or institution from which the PII was obtained under specified conditions (*see* §§ 99.33(b)(1) and 99.35(b)(1)).
- Permitting SEAs and other State educational authorities, as well as the other officials listed in § 99.31(a)(3), to record their redisclosures at the time they are made and by groups (*i.e.,* by the student's class, school district, or other appropriate grouping rather than by the name of each student whose record was redisclosed); and only requiring them to send these records of redisclosure to the educational agencies or institutions from which the PII was obtained upon the request of an educational agency or institution (*see* § 99.32(b)(2)).

Notwithstanding these provisions in the Department's FERPA regulations and the preamble discussion relating to the December 2008 changes to the regulations, the Department's review indicates that there are a small number of other regulatory provisions and policy statements that unnecessarily hinder the development and expansion of SLDS consistent with the ARRA. Because the Department has determined that these regulatory provisions and policies are not necessary to ensure privacy protections for PII, it proposes to amend 34 CFR part 99 to make the changes described in the following section.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Definitions (§ 99.3)

Authorized Representative (§§ 99.3, 99.35)

Statute: Sections (b)(1)(C), (b)(3) and (b)(5) of FERPA (20 U.S.C. 1232g(b)(1)(C), (b)(3) and (b)(5)) permit educational agencies and institutions nonconsensually to disclose PII to "authorized representatives" of State and local educational authorities, the Secretary, the Attorney General of the United States, and the Comptroller General of the United States, as may be necessary in connection with the audit, evaluation, or the enforcement of Federal legal requirements related to Federal or State supported education programs. The statute does not define the term *authorized representative.*

Current Regulations: The term *authorized representative,* which is used in current §§ 99.31(a)(3) and 99.35(a)(1), is not defined in the current regulations. Current §§ 99.31(a)(3) and 99.35(a)(1), together, implement sections (b)(1)(C), (b)(3) and (b)(5) of FERPA (20 U.S.C. 1232g(b)(1)(C), (b)(3) and (b)(5)).

Proposed Regulations: We propose to amend § 99.3 to add a definition of the term *authorized representative.* Under the proposed definition, an authorized representative would mean any entity or individual designated by a State or local educational authority or agency headed by an official listed in § 99.31(a)(3) to conduct—with respect to Federal or State supported education programs—any audit, evaluation, or compliance or enforcement activity in connection with Federal legal requirements that relate to those programs.

In order to help ensure proper implementation of FERPA requirements that protect student privacy, we also propose to amend § 99.35 (What conditions apply to disclosure of information for Federal or State program purposes?). Specifically, we would provide, in proposed § 99.35(a)(2), that responsibility remains with the State or local educational authority or agency headed by an official listed in § 99.31(a)(3) to use reasonable methods to ensure that any entity designated as its authorized representative remains compliant with FERPA. We are not proposing to define "reasonable methods" in the proposed regulations in order to provide flexibility for a State or local educational authority or an agency headed by an official listed in § 99.31(a)(3) to make these determinations. However, we are interested in receiving comments on what would be considered reasonable methods. The Department anticipates issuing non-regulatory guidance on this and other related matters when we issue the final regulations or soon thereafter.

We also would amend § 99.35 to require written agreements between a State or local educational authority or agency headed by an official listed in § 99.31(a)(3) and its authorized representative, other than an employee (*see* proposed § 99.35(a)(3)). We propose that these agreements: designate the individual or entity as an authorized representative; specify the information to be disclosed and that the purpose for which the PII is disclosed to the authorized representative is only to carry out an audit or evaluation of Federal or State supported education programs, or to enforce or to comply with Federal legal requirements that relate to those programs; require the return or destruction of the PII when no longer needed for the specified purpose in accordance with the requirements of § 99.35(b)(2); specify the time period in which the PII must be returned or destroyed; and establish policies and procedures (consistent with FERPA and other Federal and State confidentiality and privacy provisions) to protect the PII from further disclosure (except back to the disclosing entity) and unauthorized use, including limiting the use of PII to only those authorized representatives with legitimate interests (*see* proposed § 99.35(a)(3)).

We would propose a minor change to § 99.35(b) to clarify that the requirement to protect PII from disclosure applies to authorized representatives.

Finally, proposed § 99.35(d) would clarify that if the Department's Family Policy Compliance Office (FPCO) finds that a State or local educational authority, an agency headed by an official listed in § 99.31(a)(3), or an authorized representative of a State or local educational authority or agency headed by an official listed in § 99.31(a)(3) improperly rediscloses PII in violation of FERPA, the educational agency or institution from which the PII originated would be prohibited from permitting the entity responsible for the improper redisclosure (*i.e.,* the authorized representative, or the State or local educational authority or the agency headed by an officials listed in § 99.31(a)(3), or both) access to the PII for at least five years (*see* 20 U.S.C. 1232g(b)(4)(B) and § 99.33(e)).

Reasons: Under current §§ 99.31(a)(3) and 99.35(a)(1) and 20 U.S.C. 1232g(b)(1)(C), (b)(3), and (b)(5), an educational agency or institution may disclose PII to an authorized representative of a State or local educational authority or an agency headed by an official listed in § 99.31(a)(3), without prior written consent, for the purposes of conducting—with respect to Federal or State supported education programs—any audit, evaluation, or compliance or enforcement activity in connection with Federal legal requirements that relate to those education programs, provided that such disclosures are subject to the applicable privacy protections in FERPA. Although the term *authorized representative* is not defined in FERPA or the current regulations, the Department's longstanding interpretation of this term has been that it does not include other State or Federal agencies because these agencies are not under the direct control (*e.g.,* they are not employees or contractors) of a State educational authority (or other agencies headed by officials listed in § 99.31(a)(3)). (Memorandum from William D. Hansen, Deputy Secretary of Education, to State officials, January 30, 2003, ("Hansen memorandum")). Under this interpretation of the term *authorized representative,* as it is used in current §§ 99.31(a)(3) and 99.35(a)(1) (and 1232g(b)(1)(C), (b)(3), and (b)(5)), an SEA or other State educational authority may not make further disclosures of PII to other State agencies, such as State health and human services departments, because these agencies are not employees or contractors to which the State educational authority has outsourced the audit or evaluation of education programs (or other institutional services or functions). (This interpretation was later incorporated in the preamble to the final FERPA regulations published on December 9, 2008 (73 FR 74806, 74825).)

As explained in further detail in the following paragraphs, the Department has concluded that FERPA does not require that an authorized representative be under the educational authority's direct control in order to receive PII for purposes of audit or evaluation. We also do not believe such a restrictive interpretation is warranted given Congress' intent in the ARRA to have States link data across sectors. Through these regulations, therefore, we are proposing to rescind the policy established in the January 30, 2003, Hansen memorandum and the preamble to the final FERPA regulations published on December 9, 2008 (73 FR 74806, 74825). These proposed regulations also would expressly permit State and local educational authorities and other agencies headed by officials listed in § 99.31(a)(3) to exercise the flexibility and discretion to designate other individuals and entities, including other governmental agencies, as their authorized representatives for evaluation, audit, or legal enforcement or compliance purposes of a Federal or State-supported education program, subject to the requirements in FERPA and its implementing regulations.

We first note that nothing in FERPA prescribes which agencies, organizations, or individuals may serve as an authorized representative of a State or local educational authority or an agency headed by an official listed in § 99.31(a)(3), or whether an authorized representative must be a public or private entity or official. Moreover, the Department believes that it is unnecessarily restrictive to interpret FERPA as prohibiting an individual or entity who is not an employee or contractor under the "direct control" of a State or local educational authority or agency headed by an official listed in § 99.31(a)(3) from serving as an authorized representative.

One of the key purposes of FERPA is to ensure the privacy of personally identifiable information in student education records. Therefore, the determination of who can serve as an authorized representative should be

made in light of that purpose. Accordingly, we believe it is appropriate to require that any State or local educational authority or agency headed by an official listed in § 99.31(a)(3) that designates an individual or entity as an authorized representative—

- Be responsible for using reasonable methods to ensure that the designated individual or entity—
  - Uses PII only for purposes of the audit, evaluation, or compliance or enforcement activity in question;
  - Destroys or returns PII when no longer needed for these purposes; and
  - Protects PII from redisclosure (and use by any other third party), except as permitted in § 99.35(b)(1) (*i.e.,* back to the disclosing entity) (*see* proposed § 99.35(a)(2)); and
- Use a written agreement that designates any authorized representative other than an employee and includes the privacy protections set forth in proposed § 99.35(a)(3) (*i.e.,* to use reasonable methods to limit its authorized representative's use of PII for these purposes, to require the return or destruction of PII when it is no longer needed for these purposes, and to establish policies and procedures consistent with FERPA and other Federal and State confidentiality and privacy provisions) to protect PII from further disclosure (except back to the disclosing entity). If a State or local educational authority or agency headed by an official listed in § 99.31(a)(3) is able to comply with these requirements (*i.e.,* to use reasonable methods to limit its authorized representative's use of PII for these purposes, to establish policies and procedures to protect PII from further disclosure and to require the return or destruction of PII when it is no longer needed for these purposes), then there is no reason why a State health and human services or labor department, for example, should be precluded from serving as the authority's authorized representative and receiving non-consensual disclosures of PII to link education, workforce, health, family services, and other data for the purpose of evaluating, auditing, or enforcing Federal legal requirements related to, Federal or State supported education programs.

Furthermore, under proposed § 99.35(d), we would clarify that in the event that the Family Policy Compliance Office finds an improper redisclosure, the Department would prohibit the educational agency or institution from which the PII originated from permitting the party responsible for the improper redisclosure (*i.e.,* the authorized representative, or the State or local educational authority or agency headed by an official listed in § 99.31(a)(3), or both) access to the PII for at least five years.

With these proposed changes to the privacy provisions in § 99.35, we believe that PII, including PII in SLDS, will be appropriately protected while giving each State the needed flexibility to house information in a SLDS that best meets the needs of the particular State. FERPA does not constrain State administrative choices regarding the data system architecture, data strategy, or technology for SLDS as long as the required designation, purpose, and privacy protections are in place. The proposed amendments to § 99.35 would require that these protections are in place.

Directory Information (§ 99.3)

Statute: Sections (a)(5)(A), (b)(1), and (b)(2) of FERPA (20 U.S.C. 1232g(a)(5), (b)(1), and (b)(2)) permit educational agencies and institutions nonconsensually to disclose information defined as directory information, such as a student's name and address, telephone listing, date and place of birth, and major field of study, provided that specified public notice and opt out conditions have been met.

Current Regulations: Directory information is defined in current § 99.3 as information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed, and includes information listed in section (a)(5)(A) of FERPA (20 U.S.C. 1232g(a)(5)(A)) (*e.g.,* a student's name and address, telephone listing) as well as other information, such as a student's electronic mail (e-mail) address, enrollment status, and photograph. Current regulations also specify that a student's Social Security Number (SSN) or student identification (ID) number may not be designated and disclosed as directory information. However, the current regulations state that a student ID number, user ID, or other unique personal identifier used by the student for purposes of accessing or communicating in electronic systems may be designated and disclosed as directory information if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors to authenticate the user's identity.

Proposed Regulations: The proposed regulations would modify the definition of *directory information* to clarify that an educational agency or institution may designate as directory information and nonconsensually disclose a student ID number or other unique personal identifier that is displayed on a student ID card or badge if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a PIN, password, or other factor known or possessed only by the authorized user.

Reasons: Directory information items, such as name, photograph, and student ID number, are the types of information that are typically displayed on a student ID card or badge. For the reasons outlined in our discussion later in this notice regarding the proposed changes in § 99.37(c), the proposed change to the definition of *directory information* is needed to clarify that FERPA permits educational agencies and institutions to designate student ID numbers as directory information in the public notice provided to parents and eligible students in attendance at the agency or institution under § 99.37(a)(1). Including the designation of student ID numbers as a directory information item will permit schools to disclose as directory information a student ID number on a student ID card or badge if the student ID number cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity. In situations where a student's social security number is used as the student's ID number, that number may not be designated as directory information, even for purposes of a student's ID card or badge.

Education Program (§§ 99.3, 99.35)

Statute: The statute does not define the term *education program.*

Current Regulations: The term *education program,* which is used in current § 99.35(a)(1), is not defined in the current regulations. Current § 99.35(a)(1) provides that authorized representatives of the officials or agencies headed by officials listed in § 99.31(a)(3) may have non-consensual access to personally identifiable information from education records in connection with an audit or evaluation of Federal or State supported "education programs", or for the enforcement of or compliance with Federal legal requirements that relate to those programs.

Proposed Regulations: We propose to define the term *education program* to mean any program that is principally engaged in the provision of education, including, but not limited to early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education,

and adult education, regardless of whether the program is administered by an educational authority.

Reasons: The proposed definition of *education program* in § 99.3 is intended to establish that a program need not be administered by an educational agency or institution in order for it to be considered an education program for purposes of § 99.35(a)(1) and 20 U.S.C. 1232g(b)(1). The Secretary recognizes that education may begin before kindergarten and may involve learning outside of postsecondary institutions. However, in many States, programs that the Secretary would regard as education programs are not administered by SEAs or LEAs. For example, in many States, State-level health and human services departments administer early childhood education programs, including early intervention programs authorized under Part C of the Individuals with Disabilities Education Act (IDEA). Similarly, agencies other than SEAs may administer career and technical education or adult education programs. Because all of these programs could benefit from the type of rigorous data-driven evaluation that SLDS will facilitate, we are proposing to define the term *education program* to include these programs that are not administered by education agencies. This proposed change would provide greater access to information on students before entering or exiting the P–16 programs. The information could be used to evaluate these education programs and provide increased opportunities to build upon successful ones and improve less successful ones. In order to accomplish these objectives, and to give States the flexibility needed to develop and expand the SLDS contemplated under the ARRA, the Department proposes to interpret the term *education program,* as used in FERPA and its implementing regulations, to mean any program that is principally engaged in the provision of education, including, but not limited to, early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, and adult education, even when agencies other than SEAs administer such a program.[1] Thus, as an example, under the proposed definitions of the terms, *authorized representative* and *education program,* FERPA would permit a State educational authority to designate a State health and human services agency as its authorized representative in order to conduct an audit or an evaluation of any Federal or State supported education program, such as the Head Start program.

Research Studies (§ 99.31(a)(6))

Statute: Section (b)(1)(F) of FERPA permits educational agencies and institutions non-consensually to disclose PII to organizations conducting studies for, or on behalf of, educational agencies and institutions to improve instruction, to administer student aid programs, or to develop, validate, or administer predictive tests.

Current Regulations: Current § 99.31(a)(6)(ii)(C) requires that an educational agency or institution enter into a written agreement with the organization conducting the study that specifies the purpose, scope, and duration of the study and the information to be disclosed and meets certain other requirements. Current regulations do not indicate whether State and local educational authorities and agencies headed by officials listed in § 99.31(a)(3) that may redisclose PII on behalf of educational agencies and institutions under § 99.33(b) may also enter into this type of written agreement.

Proposed Regulations: The Secretary proposes to amend § 99.31 by redesignating paragraphs (a)(6)(ii) through (a)(6)(v) as paragraphs (a)(6)(iii) through (a)(6)(vi) and adding a new paragraph (a)(6)(ii). This new paragraph would clarify that nothing in FERPA or its implementing regulations prevents a State or local educational authority or agency headed by an official listed in § 99.31(a)(3) from entering into agreements with organizations conducting studies under § 99.31(a)(6)(i) and redisclosing PII on behalf of the educational agencies and institutions that provided the information in accordance with the requirements of § 99.33(b). We also propose to amend § 99.31(a)(6) to require written agreements between a State or local educational authority or agency headed by an official listed in § 99.31(a)(3) and any organization conducting studies with redisclosed PII under this exception (*see* proposed § 99.31(a)(6)(iii)(C)). Under this amended regulatory provision, these agreements would need to contain the specific provisions currently required in agreements between educational agencies or institutions and such organizations under current § 99.31(a)(6)(ii)(C). Thus, the only differences between proposed § 99.31(a)(6)(iii)(C) and current § 99.31(a)(6)(ii)(C) would be to make the written agreement requirements apply to State or local educational authorities or agencies headed by an official listed in § 99.31(a)(3) as well as educational agencies and institutions. Finally, newly redesignated § 99.31(a)(6)(iv) and (a)(6)(v) would be revised to ensure that these provisions apply to State and local educational authorities or agencies headed by an official listed in § 99.31(a)(3)—not only educational agencies and institutions.

Reasons: In the preamble to the FERPA regulations published in the **Federal Register** on December 9, 2008 (73 FR 74806, 74826), the Department explained that an SEA or other State educational authority that has legal authority to enter into agreements for LEAs or postsecondary institutions under its jurisdiction may enter into an agreement with an organization conducting a study for the LEA or institution under the studies exception in § 99.31(a)(6). The preamble explained further that if the SEA or other State educational authority does not have the legal authority to act for or on behalf of an LEA or institution, then the SEA or other State educational authority would not be permitted to enter into an agreement with an organization under this exception. The changes reflected in proposed § 99.31(a)(6)(ii) are necessary to clarify that while FERPA does not confer legal authority on State and Federal agencies to enter into agreements and act on behalf of or in place of LEAs and postsecondary institutions, nothing in FERPA prevents them from entering into these agreements and redisclosing PII on behalf of LEAs and postsecondary institutions to organizations conducting studies under § 99.31(a)(6) in accordance with the redisclosure requirements in § 99.33(b).

As explained in the preamble to the December 2008 regulations (*see* 73 FR 74806, 74821), the Department recognizes that the State and local educational authorities and Federal officials that receive PII without consent under § 99.31(a)(3) are generally responsible for supervising and monitoring LEAs and postsecondary institutions. SEAs and State higher educational agencies, in particular, typically have the role and responsibility to perform and support research and evaluation of publicly funded education programs for the benefit of multiple educational agencies and institutions in their States. We understand further that these relationships generally provide sufficient authority for a State educational authority to enter into an

[1] We intend for the proposed definition of the term *education program* to include, but not be limited to, any applicable program, as that term is defined in section 400 of the General Education Provisions Act (20 U.S.C. 1221).

agreement with an organization conducting a study and to redisclose PII received from educational agencies and institutions that provided the information in accordance with § 99.33(b). The proposed regulations, therefore, would clarify that studies supported by these State and Federal authorities of publicly funded education programs generally may be conducted, while simultaneously ensuring that any PII disclosed is appropriately protected by the organizations conducting the studies.

In the event that an educational agency or institution objects to the redisclosure of PII it has provided, the State or local educational authority or agency headed by an official listed in § 99.31(a)(3) may rely instead on any independent authority it has to further disclose the information on behalf of the agency or institution. The Department recognizes that this authority may be implied and need not be explicitly granted.

Authority To Audit or Evaluate (§ 99.35)

Statute: Sections (b)(1)(C), (b)(3) and (b)(5) of FERPA (20 U.S.C. 1232g(b)(1)(C), (b)(3) and (b)(5)) permit educational agencies and institutions non-consensually to disclose PII to authorized representatives of State and local educational authorities, the Secretary, the Attorney General of the United States, and the Comptroller General of the United States, as may be necessary in connection with the audit, evaluation, or the enforcement of Federal legal requirements related to Federal or State supported education programs.

Current Regulations: Current § 99.35(a)(2) provides that in order for a State or local educational authority or other agency headed by an official listed in § 99.31(a)(3) to conduct an audit, evaluation, or compliance or enforcement activity, its authority to do so must be established under other Federal, State, or local authority because that authority is not conferred by FERPA.

Proposed Regulations: The Secretary proposes to amend § 99.35(a)(2) by removing the provision that a State or local educational authority or other agency headed by an official listed in § 99.31(a)(3) must establish legal authority under other Federal, State or local law to conduct an audit, evaluation, or compliance or enforcement activity.

Reasons: Current §§ 99.33(b)(1) and 99.35(b)(1) permit State and local educational authorities and agencies headed by officials listed in § 99.31(a)(3) to further disclose PII from education records on behalf of educational agencies or institutions to other authorized recipients under § 99.31, including separate State educational authorities at different levels of education, provided that the redisclosure meets the requirements of § 99.33(b)(1) and the recordkeeping requirements in § 99.32(b). However, we believe that our prior guidance and statements made in the preambles to the notice of proposed rulemaking published on March 24, 2008 (73 FR 15574), and the final regulations published on December 9, 2008 (73 FR 74806), may have created some confusion about whether a State or local educational authority or agency headed by an official listed in § 99.31(a)(3) that receives PII under the audit and evaluation exception must be authorized to conduct an audit or evaluation of a Federal or State supported education program, or enforcement or compliance activity in connection with Federal legal requirements related to the education program of the disclosing educational agency or institution or whether the PII may be disclosed in order for the recipient to conduct an audit, evaluation, or enforcement or compliance activity with respect to the recipient's own Federal or State supported education programs.

By removing the language concerning legal authority from current § 99.35(a)(2), the Department would clarify two things to eliminate this confusion. First, the Department would clarify that the authority for a State or local educational authority or Federal agency headed by an official listed in § 99.31(a)(3) to conduct an audit, evaluation, enforcement or compliance activity may be express or implied. And, second, the Department would clarify that FERPA permits non-consensual disclosure of PII to a State or local educational authority or agency headed by an official listed in § 99.31(a)(3) to conduct an audit, evaluation, or compliance or enforcement activity with respect to the Federal or State supported education programs of the recipient's own Federal or State supported education programs as well as those of the disclosing educational agency or the institution.

The Department intends these clarifications to promote Federal initiatives to support the robust use of data by State and local educational authorities to evaluate the effectiveness of Federal or State supported education programs. The provision of postsecondary student data to P–12 data systems is vital to evaluating whether P–12 schools are effectively preparing students for college. This proposed clarification would, for example, establish that FERPA does not prohibit a private postsecondary institution from non-consensually disclosing to an LEA PII on the LEA's former students who are now in attendance at the private postsecondary institution, as may be necessary for the LEA to evaluate the Federal or State supported education programs that the LEA administers. This proposed clarification similarly would establish that FERPA does not prohibit a postsecondary data system from non-consensually redisclosing PII to an SEA in connection with the SEA's evaluation of whether the State's LEAs effectively prepared their graduates to enroll, persist, and succeed in postsecondary education.

Directory Information (§ 99.37)

Section 99.37(c) (Student ID Cards and ID Badges)

Statute: The statute does not address whether parents and eligible students may use their right to opt out of directory information disclosures to prevent school officials from requiring students to disclose ID cards or to wear ID badges.

Current Regulations: Current regulations do not address whether parents and eligible students may use their right to opt out of directory information disclosures to prevent school officials from requiring students to disclose ID cards or to wear ID badges.

Proposed Regulations: The proposed regulations would provide in § 99.37(c) that parents or eligible students may not use their right to opt out of directory information disclosures to prevent an educational agency or institution from requiring students to wear or otherwise disclose student ID cards or badges that display information that may be designated as directory information under § 99.3 and that has been properly designated by the educational agency or institution as directory information under § 99.37(a)(1).

Reasons: An increased awareness of school safety and security has prompted some educational agencies and institutions, especially school districts, to require students to wear and openly display a student ID badge that contains identifying information (typically, name, photo, and student ID number) when the student is on school property or participates in extracurricular activities. We have received inquiries about this issue, as well as complaints that the mandatory public display of identifying information on a student ID

badge violates the FERPA rights of parents and eligible students who have opted out of directory information disclosures. The proposed regulations are needed to clarify that the right to opt out of directory information disclosures is not a mechanism for students, when in school or at school functions, to refuse to wear student ID badges or to display student ID cards that display information that may be designated as directory information under § 99.3 and that has been properly designated by the educational agency or institution as directory information under § 99.37(a)(1). Because we recognize that the types of ID cards and badges that postsecondary institutions require may differ significantly from those required by elementary and secondary schools, we are requesting comments from postsecondary officials on whether this proposed change raises any particularized concerns for their institutions.

The directory information exception is intended to facilitate communication among school officials, parents, students, alumni, and others, and permits schools to publicize and promote institutional activities to the general public. Many schools do so by publishing paper or electronic directories that contain student names, addresses, telephone listings, e-mail addresses, and other information the institution has designated as directory information. Some schools do not publish a directory but do release directory information on a more selective basis. FERPA allows a parent or eligible student to opt out of these disclosures (under the conditions specified in § 99.37(a)), whether the information is made available to the general public, limited to members of the school community, or released only to specified individuals.

The Secretary believes, however, that the need for schools and college campuses to implement measures to ensure the safety and security of students is of the utmost importance and that FERPA should not be used as an impediment to achieving student safety. Thus, the right to opt out of the disclosure of directory information does not include the right to refuse to wear or otherwise disclose a student ID card or badge that displays directory information and, therefore, may not be used to impede a school's ability to monitor and control who is in school buildings or on school grounds or whether a student is where he or she should be. This proposed change would mean that, even when a parent or eligible student opts out of the disclosure of directory information, an educational agency or institution may nevertheless require the student to wear and otherwise disclose a student ID card or badge that displays information that may be designated as directory information under § 99.3 and that has been properly designated by the educational agency or institution as directory information under § 99.37(a)(1).

Section 99.37(d) (Limited Directory Information Policy)

Statute: Under sections (a)(5), (b)(1), and (b)(2) of FERPA (20 U.S.C. 1232g(a)(5), (b)(1), and (b)(2)), an educational agency or institution may disclose directory information without meeting FERPA's written consent requirements provided that it first notifies the parents or eligible students of the types of information that may be disclosed and allows them to opt out of the disclosure. The statute lists a number of items in the definition of directory information, including a student's name, address, and telephone listing. The statute does not otherwise address whether an educational agency or institution may have a limited directory information policy in which it specifies the exact parties who may receive directory information, the specific purposes for which the directory information may be disclosed, or both.

Current Regulations: Section 99.37(a) requires an educational agency or institution to provide public notice to parents of students in attendance and eligible students in attendance of the types of directory information that may be disclosed and the parent's or eligible student's right to opt out.

Proposed Regulations: Proposed § 99.37(d) would clarify that an educational agency or institution may specify in the public notice it provides to parents and eligible students in attendance provided under § 99.37(a) that disclosure of directory information will be limited to specific parties, for specific purposes, or both. We also propose to clarify that an educational agency or institution that adopts a limited directory information policy must limit its directory information disclosures only to those parties and purposes that were specified in the public notice provided under § 99.37(a).

Reasons: Some school officials have advised us that their educational agencies and institutions do not have a directory information policy under FERPA, due to concerns about the potential misuse by members of the public of personally identifiable information about students, including potential identity theft. Clarifying that the regulations permit educational agencies and institutions to have a limited directory information policy would give educational agencies and institutions greater discretion in protecting student privacy by permitting them to limit the release of directory information for specific purposes, to specific parties, or both. This proposed change also would provide a regulatory authority for FPCO to investigate and enforce a violation of a limited directory information policy by an educational agency or institution.

However, in order not to impose additional administrative burdens on educational agencies and institutions, the Department is not proposing changes to the recordkeeping requirement in § 99.32(d)(4), which currently excepts educational agencies and institutions from having to record the disclosure of directory information. For similar reasons, the Department is not proposing to amend the redisclosure provisions in § 99.33(c), which except the redisclosure of directory information from the general prohibition on redisclosure of personally identifiable information. While the Department is not proposing to regulate on the redisclosure of directory information by third parties that receive directory information from educational agencies or institutions under a limited directory information policy, we nevertheless strongly recommend that educational agencies and institutions that choose to adopt a limited directory information policy assess the need to protect the directory information from further disclosure by the third parties to which they disclose directory information; when a need to protect the information from further disclosure is identified, educational agencies and institutions should enter into non-disclosure agreements with the third parties.

Enforcement Procedures With Respect to Any Recipient of Department Funds That Students Do Not Attend (§ 99.60)

Statute: Sections (f) and (g) of FERPA (20 U.S.C. 1232g(f) and (g)) authorize the Secretary to take appropriate actions to enforce and address violations of FERPA in accordance with part D of the General Education Provisions Act (20 U.S.C. 1234 through 1234i) and to establish or designate an office and review board within the Department for the purpose of investigating, processing, reviewing, and adjudicating alleged violations of FERPA.

Current Regulations: Current § 99.60(b) designates the FPCO as the office within the Department responsible for investigating, processing, and reviewing alleged

violations of FERPA. Current subpart E of the FERPA regulations (§§ 99.60 through 99.67), however, only addresses alleged violations of FERPA committed by an educational agency or institution.

Proposed Regulations: Proposed § 99.60(a)(2) would provide that, solely for purposes of subpart E of the FERPA regulations, which addresses enforcement procedures, an "educational agency or institution" includes any public or private agency or institution to which FERPA applies under § 99.1(a)(2), as well as any State educational authority (*e.g.,* SEAs or postsecondary agency) or local educational authority or any other recipient to which funds have been made available under any program administered by the Secretary (*e.g.,* a nonprofit organization, student loan guaranty agency, or a student loan lender), including funds provided by grant, cooperative agreement, contract, subgrant, or subcontract.

Reasons: With the advent of SLDS, it is necessary for the Department to update our enforcement regulations to clearly set forth the Department's authority to investigate and enforce alleged violations of FERPA by State and local educational authorities or any other recipients of Department funds under a program administered by the Secretary. Current §§ 99.60 through 99.67 only apply the enforcement provisions in FERPA to an "educational agency or institution." Although the statute and the regulations broadly define the term "educational agency or institution," the Department generally has not interpreted the term to include entities that students do not attend. The Department's interpretation is based upon the fact that FERPA defines "education records" as information directly related to a "student," and that "student" is, in turn, defined as excluding a person who has not been in attendance at the educational agency or institution. 20 U.S.C. 1232g(a)(4) and (a)(6). Because students do not attend non-school types of entities the Department has generally not viewed these recipients of Department funds as being "educational agencies or institutions" under FERPA.

Consequently, the current regulations do not clearly authorize FPCO to investigate, review, and process an alleged violation committed by recipients of Department funds under a program administered by the Secretary in which students do not attend. In addition, the regulations do not clearly authorize the Secretary to bring an enforcement action against these recipients. Further, it would not be fair to hold an LEA or institution of higher education (IHE) that originally disclosed the PII to a State or local educational authority responsible for violation of FERPA by the State or local educational authority because the LEA or IHE generally would not have an effective means to prevent such an improper redisclosure by a State or local educational authority.

Therefore, the Department proposes to add a new § 99.60(a)(2) that would clearly authorize the Department to hold State educational authorities(*e.g.,* SEAs and State postsecondary agencies), local educational authorities, as well as other recipients of Department funds under any program administered by the Secretary (*e.g.,* nonprofit organizations, student loan guaranty agencies, and student loan lenders), accountable for compliance with FERPA. The Department believes that this authority is especially important given the disclosures of PII needed to implement SLDS.

Because the Department has generally not viewed these entities as being "educational agencies or institutions" under FERPA and consequently has not viewed most FERPA provisions as applying to them (*e.g.,* the requirement in § 99.7 to annually notify parents and eligible students of their rights under FERPA, and the requirement in § 99.37 to give public notice to parents and eligible students about directory information, if it has a policy of disclosing directory information), we anticipate that most FERPA compliance issues involving these entities will concern whether they have complied with FERPA's redisclosure provision in § 99.33.

We expect that we will face few issues concerning these entities' compliance with the few additional FERPA provisions that may be applicable to them. For example, the FERPA requirements, in addition to those in § 99.33, that may be applicable to entities that are not "educational agencies or institutions" under FERPA include, but are not limited to, the right to inspect and review education records maintained by an SEA or any of its components under § 99.10(a)(2), the requirement that organizations conducting studies under § 99.31(a)(6) must not permit the personal identification of parents and students by anyone other than representatives of that organization with legitimate interests in the information and must destroy or return personally identifiable information from education records when the information is no longer needed for the purposes for which the study was conducted, and the requirement in § 99.35(b)(2) that personally identifiable information from education records that is collected by a State or local educational authority or agency headed by an official listed in § 99.31(a)(3) in connection with an audit or evaluation of Federal or State supported education programs, or to enforce Federal legal requirements related to Federal or State supported education programs, must be destroyed when no longer needed for these purposes.

Executive Order 12866

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The Secretary has determined that this regulatory action is significant under section 3(f) of the Executive order.

In accordance with Executive Order 12866, the Secretary has assessed potential costs and benefits of this regulatory action and determined that the benefits justify the costs.

Need for Federal Regulatory Action

These proposed regulations are needed to ensure that the Department's implementation of FERPA continues to protect the privacy of student education records, while allowing for the effective use of data in education records, particularly data in statewide longitudinal data systems.

Summary of Costs and Benefits

Following is an analysis of the costs and benefits of the proposed changes to the FERPA regulations, which would make changes to facilitate the disclosure, without written consent, of education records, particularly data in

statewide longitudinal data systems, for the purposes of evaluating education programs and ensuring compliance with Federal and State requirements. In conducting this analysis, the Department examined the extent to which the proposed changes would add to or reduce the costs of educational agencies, other agencies, and institutions in complying with the FERPA regulations prior to these changes, and the extent to which the proposed changes are likely to provide educational benefit. Allowing data-sharing across agencies, because it increases the number of individuals who have access to personally identifiable information, may increase the risk of unauthorized disclosure. However, we do not believe that the staff in the additional agencies who will have access to the data are any more likely to violate FERPA than existing users, and the strengthened accountability and enforcement mechanisms will help to ensure better compliance overall. While there will be administrative costs associated with implementing data-sharing protocols, we believe that the relatively minimal administrative costs of establishing data-sharing protocols would be off-set by potential analytic benefits. Based on this analysis, the Secretary has concluded that the proposed modifications would result in savings to entities and have the potential to benefit the Nation by improving capacity to conduct analyses that will provide information needed to improve education.

Authorized Representative

The proposed regulations would amend § 99.3 by adding a definition of the term *authorized representative* that would include any individual or entity designated by an educational authority or certain other officials to carry out audits, evaluations, or enforcement or compliance activities relating to education programs. Under the current regulations, educational authorities may provide to authorized representatives PII for the purposes of conducting audits, evaluations, or enforcement and compliance activities relating to Federal and State supported education programs. The term "authorized representative" is not defined, but the Department's position has been that educational authorities may only disclose education records to entities over which they have direct control, such as an employee or a contractor of the authority. Therefore, SEAs have not been able to disclose PII to other State agencies, even for the purpose of evaluating education programs under the purview of the SEAs. For example, an SEA or LEA could not disclose PII to a State employment agency for the purpose of obtaining data on post-school outcomes such as employment for its former students. Thus, if an SEA or LEA wanted to match education records with State employment records for purposes of evaluating its secondary education programs, it would have to import the entire workforce database and do the match itself (or contract with a third party to do the same analysis). Similarly, if a State workforce agency wanted to use PII maintained by the SEA in its longitudinal educational data system, in combination with data it had on employment outcomes, to evaluate secondary vocational education programs, it would not be able to obtain the SEA's educational data in order to conduct the analyses. It would have to provide the workforce data to the SEA to conduct the analyses or to a third party (*e.g.,* an entity under the direct control of the SEA) to construct the needed longitudinal administrative data systems. While feasible, these strategies force agencies to outsource their analyses to other agencies or entities, adding administrative cost, burden, and complexity. Moreover, preventing agencies from using data directly for conducting their own analytical work increases the likelihood that the work will not meet their expectations or get done at all. Finally, the current interpretation of the regulations exposes greater amounts of PII to risk of disclosure as a result of greater quantities of PII moving across organizations (*e.g.,* the entire workforce database) than would be the case with a more targeted data request (*e.g.,* graduates from a given year who appear in the workforce database). The proposed regulatory changes would permit educational agencies (and other entities listed in § 99.31(a)(3)) to non-consensually disclose PII to other State agencies or to house data in a common State data system, such as a data warehouse administered by a central State authority for the purposes of conducting audits or evaluations of Federal or State supported education programs, or for enforcement of and compliance with Federal legal requirements relating to Federal and State supported education programs (consistent with FERPA and other Federal and State confidentiality and privacy provisions).

The Department also proposes to amend § 99.35 to require that written agreements require PII to be used only to carry out an audit or an evaluation of Federal or State supported education program or for an enforcement or compliance activity in connection with Federal legal requirements that relate to those programs and protect PII from unauthorized disclosure. The cost of entering into such agreements should be minimal in relation to the benefits of being able to share data.

Education Program

The proposed regulations would amend § 99.3 by providing a definition of the term *education program* to clarify that an education program can include a program administered by a non-educational agency, *e.g.,* an early childhood program administered by a human services agency or a career or technical training program administered by a workforce or labor agency. This proposed change, in combination with the proposed definition of the term *authorized representative,* would allow non-educational agencies to have easier access to PII in student education records that they could use to evaluate the education programs they administer. For example, this proposed change would permit nonconsensual disclosures of PII in elementary and secondary school education records to a non-educational agency that is administering an early childhood education program in order to evaluate the impact of its early childhood education program on its students' long-term educational outcomes. The potential benefits of this proposed change are substantial, including the benefits of non-educational agencies that are administering "education programs" being able to conduct their own analyses without incurring the prohibitive costs of obtaining consent for access to individual student records.

Research Studies

Section (b)(1)(F) of FERPA permits educational agencies and institutions non-consensually to disclose PII to organizations conducting research studies for, or on behalf of, educational agencies or institutions that provided the PII, for statutorily-specified purposes. The proposed amendment to § 99.31(a)(6) would permit any of the authorities listed in § 99.31(a)(3), including SEAs, to enter into written agreements that provide for the disclosure of PII to research organizations for studies that would benefit the educational agencies or institutions that provided the PII to the SEA or other educational authorities, whether or not the educational authority has explicit authority to act on behalf of those agencies or institutions. The preamble to the final FERPA regulations published in the **Federal Register** on

December 9, 2008 (73 FR 74806, 74826) took the position that an SEA, for example, cannot re-disclose PII obtained from LEAs to a research organization unless the SEA had separate legal authority to act on an LEA's (or other educational institution's) behalf. Because, in practice, this authority may not be explicit in all States, we propose to amend § 99.31 to specifically allow State educational authorities to enter into agreements with research organizations for studies that are for enumerated purposes under FERPA, such as studies to improve instruction (*see* proposed § 99.31(a)(6)(ii)). The Department believes that this change will have benefits for education because it would reduce the administrative costs of, and reduce the barriers to, using student data, including data in SLDS, in order to conduct studies to improve education programs.

Authority to Evaluate

Under current § 99.35(a)(2), the authority for an SEA or LEA to conduct an audit, evaluation, or compliance or enforcement activity is not conferred by FERPA, but "must be established under other Federal, State, or local authority." Lack of such explicit State or local authority has hindered the use of data in some States. The proposed amendments would remove the discussion of legal authority in order to clarify that FERPA and its implementing regulations do not require that a State or local educational authority have express legal authority to conduct audits, evaluations, or compliance or enforcement activities, but instead may obtain PII when they have implied authority to conduct evaluation, audit, and compliance activities of their own programs.

This proposed change also would allow an SEA to receive PII from postsecondary institutions as needed to evaluate its own programs and determine whether its schools are adequately preparing students for higher education. The preamble to the final FERPA regulations published in the **Federal Register** on December 9, 2008 (73 FR 74806, 74822) suggested that PII in the records of postsecondary institutions could only be disclosed to an SEA if the SEA has legal authority to evaluate postsecondary institutions. This interpretation restricts SEAs from conducting analyses to determine how effectively they are preparing students for higher education and from identifying effective programs, and thus has hindered efforts to improve education. The primary benefit of this proposed change is that it would allow SEAs to conduct analyses (consistent with FERPA and other Federal and State confidentiality and privacy provisions) that they previously were unable to undertake, without incurring the prohibitive costs of obtaining consent from students or parents in order to obtain, without prior, written consent, PII for the purpose of program evaluations.

Educational Agency or Institution

Sections (f) and (g) of FERPA authorize the Secretary to take appropriate actions to enforce and deal with FERPA violations, but subpart E of the FERPA regulations only addresses alleged violations of FERPA by an "educational agency or institution." Because the Department has not interpreted that term to include agencies or institutions that students do not attend, the current FERPA regulations do not specifically permit the Secretary to bring an enforcement action against an SEA or other State or local educational authority that does not meet the definition of an "educational agency or institution" under FERPA. Thus, for example, if an SEA improperly redisclosed PII obtained from its LEAs, the Department would pursue enforcement actions against each of the LEAs, and not the SEA. Proposed § 99.60(a)(2), which would define an "educational agency or institution" to include any State or local educational authority or other recipient that has received Department of Education funds, would allow the Department to pursue enforcement against a State agency or other recipient of Department funds that had allegedly disclosed the PII, rather than against the agency or institution that had provided the PII to the State agency or other recipient of Department funds.

This change would result in some administrative savings and improve the efficiency of the enforcement process. Under the current regulations, if, for example, an SEA with 500 LEAs improperly redisclosed PII from its SLDS to an unauthorized party, the Department would need to investigate each of the 500 LEAs, which are unlikely to have knowledge relating to the disclosure. Under the proposed change, the LEAs would be relieved of any administrative costs associated with responding to the Department's request for information about the disclosure and the Department could immediately direct the focus of its investigation on the SEA, the agency most likely to have information on and bear responsibility for the disclosure of PII, without having to waste time and resources contacting the LEAs.

We welcome public input and data to further inform and allow us to quantify the costs and benefits of these proposed changes. We particularly welcome information on the costs encountered by State agencies using education data maintained by SEAs and the impediments to using postsecondary education data.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 99.35.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, *see* the instructions in the **ADDRESSES** section of this preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that this regulatory action will not have a significant economic impact on a substantial number of small entities.

The small entities that this final regulatory action will affect are small LEAs. The Secretary believes that the costs imposed on applicants by these regulations would be limited to paperwork burden related to requirements concerning data-sharing agreements and that the benefits from ensuring that data from education records are collected, stored, and shared appropriately outweigh any costs incurred by applicants.

The U.S. Small Business Administration Size Standards define as

"small entities" for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

According to estimates from the U.S. Census Bureau's Small Area Income and Poverty Estimates programs that were based on school district boundaries for the 2007–8 school year, there are 12,484 LEAs in the country that include fewer than 50,000 individuals within their boundaries and for which there is estimated to be at least one school-age child. In its 1997 publication, *Characteristics of Small and Rural School Districts,* the National Center for Education Statistics defined a small school district as "one having fewer students in membership than the sum of (a) 25 students per grade in the elementary grades it offers (usually K–8) and (b) 100 students per grade in the secondary grades it offers (usually 9–12)." Using this definition, a district would be considered small if it had fewer than 625 students in membership. The Secretary believes that the 4,800 very small LEAs that meet this second definition are highly unlikely to enter into data-sharing agreements directly with outside entities.

The Department does not have reliable data with which to estimate how many of the remaining 7,684 small LEAs would enter into data-sharing agreements. For small LEAs that enter into data-sharing agreements, we estimate that they would spend approximately 4 hours executing each agreement, using a standard data-sharing protocol. Thus, we assume the impact on the entities would be minimal. However, we invite comment from entities familiar with data-sharing in small districts on the number of entities likely to enter into agreements each year, the number of such agreements, and number of hours required to execute each agreement.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications.

"Federalism implications" means substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed regulations in §§ 99.3, 99.31(a)(6), and 99.35 may have federalism implications, as defined in Executive Order 13132, in that they will have some effect on the States and the operation of educational agencies and institutions subject to FERPA. We encourage State and local elected officials to review and provide comments on these proposed regulations. To facilitate review and comment by appropriate State and local officials, the Department will, aside from publication in the **Federal Register**, post the NPRM to the FPCO Web site and to the Privacy Technical Assistance Center (PTAC) Web site and make a specific e-mail posting via a special listserv that is sent to each State department of education superintendent and higher education commission director.

Paperwork Reduction Act of 1995

Proposed §§ 99.31(a)(6)(ii) and 99.35(a)(3) contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review. (OMB Control Number 1875–0246.)

The proposed regulations modify the information collection requirements in § 99.31(a)(6)(ii) and § 99.32(b)(2); however, the Department does not believe the proposed changes add any new burden to State or local educational authorities. Burdens associated with §§ 99.31(a)(6)(ii) and 99.32(b)(2) were approved under OMB Control Number 1875–0246 when the December 9, 2008 regulations were published. The proposed change that would clarify that nothing in FERPA prevents a State or local educational authority or Federal agencies and officials listed in § 99.31(a)(3) from entering into written agreements with organizations conducting studies, for or on behalf of educational agencies and institutions does not constitute a change or an increase in burden. This is because the provision would permit an organization conducting a study to enter into one written agreement with a State or local educational authority or Federal agency or official listed in § 99.31(a)(3), rather than making the organization enter into many more written agreements with each school district or school that provided the data to the State or local educational authority or Federal agency or official listed in § 99.31(a)(3). The addition of the definition of the term *authorized representative,* which would permit a State or local educational authority, the Secretary, the Comptroller General of the United States, or the Attorney General of the United States to designate any entity or individual to conduct—with respect to Federal or State supported education programs—any audit, evaluation, or compliance or enforcement activity in connection with Federal legal requirements that related to those programs also does not constitute a change or an increase in burden because these entities are already required to record disclosures, pursuant to § 99.32(b)(2).

Section 99.35(a)(3) would be a new requirement that requires the agency headed by an official listed in § 99.31(a)(3) to use a written agreement to designate any authorized representative other than an agency employee. Under the proposed regulations, the agreement would need to: (1) Designate the individual or entity as an authorized representative; (2) specify the information to be disclosed and the purpose for which the information is disclosed to the authorized representative (*i.e.,* to carry out an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs); (3) require the authorized representative to destroy or return to the State or local educational authority or agency headed by an official listed in § 99.31(a)(3) personally identifiable information from education records when the information is no longer needed for the purpose specified; (4) specify the time period in which the information must be returned or destroyed; and (5) establish policies and procedures consistent with FERPA and other Federal and State privacy and confidentiality provisions to protect personally identifiable information from education records from further disclosure (except back to the disclosing entity) and unauthorized use, included limiting use of information by only those authorized representatives of the entity with legitimate interested. The burden for States under this provision is estimated at 40 hours annually for each educational authority (one for K–12 and one for postsecondary).

If you want to comment on the proposed information collection requirements in these proposed regulations, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the U.S. Department of Education. Send these comments by e-mail to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. Commenters need only submit comments via one submission medium. You may also send a copy of these comments to the Department contact

named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Category of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 99

Administrative practice and procedure, Education records, Education research, Information, Personally identifiable information, Privacy, Records, Statewide longitudinal data systems.

Dated: April 1, 2011.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend part 99 of title 34 of the Code of Federal Regulations as follows:

PART 99—FAMILY EDUCATIONAL RIGHTS AND PRIVACY

1. The authority citation for part 99 continues to read as follows:

Authority: 20 U.S.C. 1232g, unless otherwise noted.

2. Section 99.3 is amended by:

A. Adding, in alphabetical order, definitions for "authorized representative" and "education program".

B. Revising the definition of "directory information".

The additions and revision read as follows:

§ 99.3 What definitions apply to these regulations?

* * * * *

Authorized representative means any entity or individual designated by a State or local educational authority or an agency headed by an official listed in § 99.31(a)(3) to conduct—with respect to Federal or State supported education programs—any audit, evaluation, or compliance or enforcement activity in connection with Federal legal requirements that relate to those programs.

(Authority: 20 U.S.C. 1232g(b)(1)(C), (3), and (5))

* * * * *

Directory information means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed.

(a) Directory information includes, but is not limited to, the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (*e.g.,* undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors, and awards received; and the most recent educational agency or institution attended.

(b) Directory information does not include a student's—

(1) Social security number; or

(2) Student identification (ID) number, except as provided in paragraph (c) of this section.

(c) Directory information includes—

(1) A student ID number, user ID, or other unique personal identifier used by a student for purposes of accessing or communicating in electronic systems, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a personal identification number (PIN), password or other factor known or possessed only by the authorized user; and

(2) A student ID number or other unique personal identifier that is displayed on a student ID badge, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a PIN, password, or other factor known or possessed only by the authorized user.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

* * * * *

Education program means any program that is principally engaged in the provision of education, including, but not limited to, early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, and adult education.

(Authority: 20 U.S.C. 1232g(b)(3), (5))

* * * * *

3. Section 99.31 is amended by:

A. Redesignating paragraphs (a)(6)(ii) through (v) as paragraphs (a)(6)(iii) through (vi), respectively.

B. Adding a new paragraph (a)(6)(ii).

C. Revising the introductory text of newly redesignated paragraph (a)(6)(iii).

D. Revising the introductory text of newly redesignated paragraph (a)(6)(iii)(C).

E. Revising newly redesignated paragraph (a)(6)(iii)(C)(*4*).

F. Revising newly redesignated paragraph (a)(6)(iv).

G. Revising newly redesignated paragraph (a)(6)(v).

The addition and revisions read as follows:

§ 99.31 Under what conditions is prior consent not required to disclose information?

(a) * * *

(6) * * *

(ii) Nothing in the Act or this part prevents a State or local educational authority or agency headed by an official listed in paragraph (a)(3) of this section from entering into agreements with organizations conducting studies under paragraph (a)(6)(i) of this section and redisclosing personally identifiable information from education records on behalf of educational agencies and institutions that disclosed the information to the State or local educational authority or agency headed by an official listed in paragraph (a)(3) of this section in accordance with the requirements of § 99.33(b).

(iii) An educational agency or institution may disclose personally identifiable information under paragraph (a)(6)(i) of this section, and a State or local educational authority or agency headed by an official listed in paragraph (a)(3) of this section may redisclose personally identifiable information under paragraph (a)(6)(i) and (a)(6)(ii) of this section, only if—

* * * * *

(C) The educational agency or institution or the State or local educational authority or agency headed by an official listed in paragraph (a)(3) of this section enters into a written agreement with the organization that—

* * * * *

(*4*) Requires the organization to destroy or return to the educational agency or institution or the State or local educational authority or agency headed by an official listed in paragraph (a)(3) of this section all personally identifiable information when the information is no longer needed for the purposes for which the study was conducted and specifies the time period in which the information must be returned or destroyed.

(iv) An educational agency or institution or State or local educational authority or agency headed by an official listed in paragraph (a)(3) of this section is not required to initiate a study or agree with or endorse the conclusions or results of the study.

(v) If the Family Policy Compliance Office determines that a third party, outside the educational agency or institution, or the State or local educational authority or agency headed by an official listed in paragraph (a)(3) of this section to which personally identifiable information is disclosed under paragraph (a)(6) of this section, violates paragraph (a)(6)(iii)(B) of this section, then the educational agency or institution, or the State or local educational authority or agency listed in paragraph (a)(3) of this section from which the personally identifiable information originated may not allow the third party responsible for the violation of paragraph (a)(6)(iii)(B) of this section access to personally identifiable information from education records for at least five years.

* * * * *

4. Section 99.35 is amended by:

A. Revising paragraph (a)(2).

B. Adding a new paragraph (a)(3).

C. Revising paragraph (b).

D. Adding a new paragraph (d).

E. Revising the authority citation at the end of the section.

The additions and revisions read as follows:

§ 99.35 What conditions apply to disclosure of information for Federal or State program purposes?

(a) * * *

(2) The State or local educational authority or agency headed by an official listed in § 99.31(a)(3) is responsible for using reasonable methods to ensure that any entity or individual designated as its authorized representative—

(i) Uses personally identifiable information from education records only to carry out an audit, evaluation, or an activity for the purpose of enforcement of, or ensuring compliance with, Federal legal requirements related to Federal or State supported education programs;

(ii) Protects the personally identifiable information from further disclosures or other uses, except as authorized in paragraph (b)(1) of this section; and

(iii) Destroys the personally identifiable information in accordance with the requirements of paragraphs (b) and (c) of this section.

(3) The State or local educational authority or agency headed by an official listed in § 99.31(a)(3) must use a written agreement to designate any authorized representative, other than an employee. The written agreement must—

(i) Designate the individual or entity as an authorized representative;

(ii) Specify the information to be disclosed and that the purpose for which the information is disclosed to the authorized representative is to carry out an audit or evaluation of Federal or State supported education programs, or to enforce or to comply with Federal legal requirements that relate to those programs;

(iii) Require the authorized representative to destroy or return to the State or local educational authority or agency headed by an official listed in § 99.31(a)(3) personally identifiable information from education records when the information is no longer needed for the purpose specified;

(iv) Specify the time period in which the information must be returned or destroyed; and

(v) Establish policies and procedures, consistent with FERPA and other Federal and State confidentiality and privacy provisions, to protect personally identifiable information from education records from further disclosure (except back to the disclosing entity) and unauthorized use, including limiting use of personally identifiable information to only authorized representatives with legitimate interests.

(b) Information that is collected under paragraph (a) of this section must—

(1) Be protected in a manner that does not permit personal identification of individuals by anyone other than the authorities or agencies headed by officials referred to in paragraph (a) of this section and their authorized representatives, except that those authorities and agencies may make further disclosures of personally identifiable information from education records on behalf of the educational agency or institution in accordance with the requirements of § 99.33(b); and

(2) Be destroyed when no longer needed for the purposes listed in paragraph (a) of this section.

* * * * *

(d) If the Family Policy Compliance Office finds that a State or local educational authority, an agency headed by an official listed in § 99.31(a)(3), or an authorized representative of a State or local educational authority or an agency headed by an official listed in § 99.31(a)(3), improperly rediscloses personally identifiable information from education records, the educational agency or institution from which the personally identifiable information originated may not allow the authorized representative, or the State or local educational authority or the agency headed by an official listed in § 99.31(a)(3), or both, access to personally identifiable information from education records for at least five years.

(Authority: 20 U.S.C. 1232g(b)(1)(C), (3), and (5))

5. Section 99.37 is amended by:

A. Revising paragraph (c).

B. Redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d).

The additions and revisions read as follows:

§ 99.37 What conditions apply to disclosing directory information?

* * * * *

(c) A parent or eligible student may not use the right under paragraph (a)(2) of this section to opt out of directory information disclosures to—

(1) Prevent an educational agency or institution from disclosing or requiring a student to disclose the student's name, identifier, or institutional e-mail address in a class in which the student is enrolled; or

(2) Prevent an educational agency or institution from requiring a student to wear, to display publicly, or to disclose a student ID card or badge that exhibits information that may be designated as directory information under § 99.3 and that has been properly designated by the educational agency or institution as directory information in the public notice provided under paragraph (a)(1) of this section.

(d) In its public notice to parents and eligible students in attendance at the agency or institution that is described in paragraph (a) of this section, an educational agency or institution may specify that disclosure of directory information will be limited to specific parties, for specific purposes, or both. When an educational agency or institution specifies that disclosure of directory information will be limited to specific parties, for specific purposes, or both, the educational agency or institution must limit its directory information disclosures to those specified in its public notice that is described in paragraph (a) of this section.

* * * * *

6. Section 99.60 is amended by redesignating paragraph (a) as paragraph (a)(1) and adding a new paragraph (a)(2) to read as follows:

§ 99.60 What functions has the Secretary delegated to the Office and to the Office of Administrative Law Judges?

(a) * * *

(2) Solely for the purposes of this subpart, an "educational agency or institution" includes any public or private agency or institution to which this part applies under § 99.1(a)(2), as well as any State or local educational authority or any other recipient to which funds have been made available under any program administered by the Secretary, including funds provided by grant, cooperative agreement, contract, subgrant, or subcontract.

* * * * *

[FR Doc. 2011–8205 Filed 4–7–11; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2005–TX–0013; FRL–9290–1]

Approval and Promulgation of Implementation Plans; Texas; System Cap Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: On November 18, 2010 (75 FR 70654), EPA published a proposed rule to disapprove severable portions of two revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas on May 1, 2001, and August 16, 2007, that create and amend the System Cap Trading (SCT) Program at Title 30 Texas Administrative Code, Chapter 101—General Air Quality, Subchapter H—Emissions Banking and Trading, Division 5, sections 101.380, 101.382, 101.383, and 101.385. We proposed disapproval because the SCT Program lacks several necessary components for emissions trading programs as outlined in EPA's Economic Incentive Program Guidance. Subsequent to our proposed disapproval, EPA received a letter dated March 4, 2011, from the Texas Commission on Environmental Quality (TCEQ) stating that the May 1, 2001, and August 16, 2007, SCT Program SIP submissions have been withdrawn from our consideration as revisions to the Texas SIP. Therefore, EPA is withdrawing our proposed disapproval and finds that no further action is necessary on the SCT Program. The State's action also withdraws from EPA's review the SCT Program component of the January 22, 2010 Consent Decree between EPA and the BCCA Appeal Group, Texas Association of Business, and Texas Oil and Gas Association. This withdrawal is being taken under section 110 and parts C and D of the Federal Clean Air Act.

DATES: The proposed rule published on November 18, 2010 (75 FR 70654), is withdrawn as of April 8, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Wiley (6PD–R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD–R), Suite 1200, Dallas, TX 75202–2733. The telephone number is (214) 665–2115. Ms. Wiley can also be reached via electronic mail at *wiley.adina@epa.gov*.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: March 25, 2011.

Al Armendariz,

Regional Administrator, EPA Region 6.

[FR Doc. 2011–8427 Filed 4–7–11; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 76, No. 68
Friday, April 8, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before June 7, 2011.

FOR FURTHER INFORMATION CONTACT: Sylvia Joyner, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07C, RRB, Washington, DC, 20523 (202) 712–5007 or via e-mail *sjoyner@usaid.gov.*

ADDRESSES: Send comments via e-mail at *rjones@usaid.gov,* United States Agency for International Development, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC 20523–8700, 202–712–0674.

SUPPLEMENTARY INFORMATION:

OMB NO: OMB 0412–0563.

Form No.: AID 1570–14.

Title: Report on Commodities.

Type of Review: Renewal of Information Collection.

Purpose: The purpose on this information collection is to properly respond to the annual competition among applicants who apply on behalf of their sponsored overseas institutions and independent reviewers. ASHA needs to assess the strength and capability of the U.S. organizations, the overseas institutions and the merits of their proposed projects. Easily accessible historical records on past accomplishments and performance by repeat USOs, would speed the grant making process and provide documented reasons for both successful and unsuccessful applications.

Annual Reporting Burden

Respondents: 75.

Total annual responses: 300.

Total annual hours requested: 900 hours.

Dated: March 30, 2011.

Mercedes Eugenia,

Acting Chief, Information and Records Division, Office of Management Services, Bureau for Management.

[FR Doc. 2011–8295 Filed 4–7–11; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before June 7, 2011.

FOR FURTHER INFORMATION CONTACT: Sylvia Joyner, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07C, RRB, Washington, DC 20523, (202) 712–5007 or via e-mail *sjoyner@usaid.gov.*

ADDRESSES: Send comments via e-mail at *rjones@usaid.gov,* United States Agency for International Development, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC 20523–8700, 202–712–0674.

SUPPLEMENTARY INFORMATION:

OMB No.: OMB 0412–0562.

Form No.: AID 1570–13.

Title: Narrative/Time-Line Report.

Type of Review: Renewal of Information Collection.

Purpose: This collection is a management and monitoring report used by the Bureau for Democracy, Conflict and Humanitarian Assistance, Office of American Schools and Hospitals Abroad. The collection will ascertain that grant financed programs meet authorized objectives within the terms of agreements between its office and the recipients, which are United States Organizations that sponsor Overseas Institutions.

Annual Reporting Burden

Respondents: 130.

Total annual responses: 520.

Total annual hours requested: 1,560 hours.

Dated: March 30, 2011.

Mercedes Eugenia,

Acting Chief, Information and Records Division, Office of Management Services, Bureau for Management.

[FR Doc. 2011–8296 Filed 4–7–11; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Draft Environmental Assessment; Giant Miscanthus in Arkansas, Missouri, Ohio, and Pennsylvania

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of a draft environmental assessment (EA) for the proposed establishment and production of giant miscanthus (*Miscanthus X giganteus*) as a dedicated energy crop to be grown in the Aloterra Energy and MFA Oil Biomass Company (project sponsors) proposed project areas in Arkansas, Missouri, Ohio, and Pennsylvania as part of the Biomass Crop Assistance Program (BCAP). This notice provides a means for the public to submit comments to voice concerns about the proposed BCAP project areas.

DATES: We will consider comments that we receive by May 7, 2011. The Farm Service Agency (FSA) will consider comments received after that date to the extent possible.

ADDRESSES: We invite you to submit comments on the draft EA. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *E-Mail: GiantMiscanthusEA Comments@intenvsol.com.*
- *Fax:* 972–562–7673 ATTN: Giant Miscanthus EA Comments.
- *Mail:* Giant Miscanthus EA Comments, Integrated Environmental Solutions, LLC, 2150 S Central Expy Ste 110, McKinney, TX 75070.
- *Hand Delivery or Courier:* Deliver comments to the above address.

Comments may be inspected in the Office of the Director, CEPD, FSA, USDA, Room 4709 South Building, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

You may request copies of the draft EA for Giant Miscanthus by writing to: Giant Miscanthus EA Copies, Integrated Environmental Solutions, LLC, 2150 S Central Expy, Ste 110, McKinney, TX 75070, or by e-mail to: *rschneider@intenvsol.com,* with the subject: "Request for copy draft Giant Miscanthus EA."

FOR FURTHER INFORMATION CONTACT: Matthew Ponish, (202) 720–6853.

Persons with disabilities who require alternative means for communication (braille, large print, audio tape, *etc.*) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: The Aloterra Energy and MFA Oil Biomass Company submitted a proposal to FSA to establish BCAP project areas in Arkansas, Missouri, Ohio, and Pennsylvania. The proposal is to establish and produce giant miscanthus as a dedicated energy crop. The draft EA analyzes the environmental impacts of growing giant miscanthus in those areas. FSA will review comments submitted on the draft EA in response to this notice and use the additional input in developing the final EA and decision document about whether to approve the project or not. This notice announces the availability of the draft EA and the opening of the comment period; it does not discuss the contents of the draft EA.

The draft EA for the proposed BCAP project areas supporting the establishment and production of Giant Miscanthus (*Miscanthus X giganteus*) in Arkansas, Missouri, Ohio, and Pennsylvania sponsored by Aloterra Energy LLC and MFA Oil Biomass LLC is now available to review for the environmental impact.

The draft EA was prepared in accordance with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347); the regulations of the Council on Environmental Quality (CEQ) (40 CFR parts 1500–1508); and FSA regulations for compliance with NEPA (7 CFR 799). As specified in the CEQ regulation, an EA is " * * * a concise document for which a Federal agency is responsible that serves to (1) briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement [EIS] or (2) a finding of no significant impact" (40 CFR 1508.9). Additionally, since this document falls under the guidance of the BCAP final programmatic EIS (PEIS), which was a broad national-level program document, CEQ guidance allows for "tiering." The CEQ regulation states that tiering "refers to the coverage of general matters in broader environmental impact statements with subsequent narrower statements or environmental analyses incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared" (40 CFR 1508.28).

Section 9001 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, commonly referred to as the 2008 Farm Bill) authorizes BCAP. BCAP is administered by the FSA Deputy Administrator for Farm Programs, on behalf of the Commodity Credit Corporation (CCC), with the support of other Federal and local agencies. BCAP is intended to assist agricultural and forest land owners and operators with the establishment and production of eligible crops in selected project areas for conversion to bioenergy, and the collection, harvest, storage, and transportation of eligible material for use in a biomass conversion facility.

On October 27, 2010, CCC published the Record of Decision (ROD) for the BCAP final PEIS (75 FR 65995–66007) and BCAP final rule (76 FR 66202–66243) in the **Federal Register**. As part of the mitigation measures detailed in the ROD, each project proposal is subject to a NEPA analysis prior to approval of the project area proposal. The initial environmental evaluation of a project area proposal is based on information contained in specific forms: BCAP–19, BCAP–20, BCAP–21, and BCAP–22, with supporting information. After this initial evaluation FSA can conclude either that:

(1) No additional environmental analyses are applicable due to no potential for the proposed BCAP activity to significantly impact the environment, or

(2) Additional environmental analyses in the form of an EA or EIS are necessary, depending upon the potential level of significance.

Due to inconclusive results in the initial environmental evaluation, FSA is required to do an EA to make a determination whether there could be significant environmental impacts.

The draft EA can be reviewed online at *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecrc&topic=nep-cd.*

Signed in Washington, DC on April 5, 2011.

Carolyn B. Cooksie,

Acting Executive Vice President, Commodity Credit Corporation, and Acting Administrator, Farm Service Agency.

[FR Doc. 2011–8421 Filed 4–7–11; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 2011–0004]

Exemption for Retail Store Operations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of adjusted dollar limitations.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the dollar limitations on the amount of meat and meat food products, poultry and poultry products that a retail store can sell to hotels, restaurants, and similar institutions without disqualifying itself for exemption from Federal inspection requirements. In accordance with FSIS's regulations, for calendar year 2011, the dollar limitation for meat and meat food products is being increased from $60,200 to $61,900 but for poultry products will remain at $50,200. FSIS is retaining or changing the dollar limitations from calendar year 2010 based on price changes for these products evidenced by the Consumer Price Index.

DATES: *Effective Date:* This notice is effective April 8, 2011.

FOR FURTHER INFORMATION CONTACT: Contact John O'Connell, Policy Issuances Division, Office of Policy and Program Development, FSIS, U.S. Department of Agriculture, Room 6083 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700; telephone (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) provide a comprehensive statutory framework to ensure that meat, meat food products, poultry, and poultry products prepared for commerce are wholesome, not adulterated, and properly labeled and packaged. Statutory provisions requiring inspection of the preparation or processing of meat, meat food, poultry, and poultry products do not apply to the types of operations traditionally and usually conducted at retail stores and restaurants when those operations are conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities (21 U.S.C. 661(c)(2) and 454(c)(2)) FSIS's regulations (9 CFR 303.1(d) and 381.10(d)) elaborate on the conditions under which requirements for inspection do not apply to retail operations involving the preparation or processing of meat, meat food, poultry, and poultry products.

Sales to Hotels, Restaurants, and Similar Institutions

Under these regulations, sales to hotels, restaurants, and similar institutions (other than household consumers) disqualify a store for exemption if the product sales exceed either of two maximum limits: 25 percent of the dollar value of total product sales or the calendar year dollar limitation set by the Administrator. The dollar limitation is adjusted automatically during the first quarter of the year if the Consumer Price Index (CPI), published by the Bureau of Labor Statistics, shows an increase or decrease of more than $500 in the price of the same volume of product for the previous year. FSIS publishes a notice of the adjusted dollar limitations in the **Federal Register**. (*See* 9 CFR 303.1(d)(2)(iii)(*b*) and 381.10(d)(2)(iii)(*b*).)

The CPI for 2010 reveals an annual average price increase for meat and meat food products at 2.84 percent and an annual average price decrease for poultry products at 0.12 percent. When rounded to the nearest $100, the price for meat and meat food products increased by $1,700 and the price for poultry products decreased by $100. Because the price of meat and meat food products increased by more than $500, and because the price of poultry products did not decrease by more than $500, FSIS is increasing the dollar limitation on sales to hotels, restaurants, and similar institutions to $61,900 for meat and meat food products and is retaining it at $50,200 for poultry products for calendar year 2011, in accordance with 9 CFR 303.1(d)(2)(iii)(*b*) and 381.10 (d)(2)(iii)(*b*).

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The Update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.*

Options range from recalls, export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on April 5, 2011.

Alfred V. Almanza,

Administrator.

[FR Doc. 2011–8413 Filed 4–7–11; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2011–0007]

Codex Alimentarius Commission: Meeting of the Codex Alimentarius Commission

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), is sponsoring a public meeting on June 16, 2011. The objective of the public meeting is to provide information and receive public comments on agenda

items and draft United States (U.S.) positions that will be discussed at the 34th session of the Codex Alimentarius Commission (CAC), which will be held in Geneva, Switzerland, July 4–9, 2011. The Under Secretary for Food Safety recognizes the importance of providing interested parties the opportunity to obtain background information on the 34th session of the CAC and to address items on the agenda.

DATES: The public meeting is scheduled for June 16, 2011, from 1 p.m. to 4 p.m.

ADDRESSES: The public meeting will be held in the Jamie L. Whitten Building, USDA, 1400 Independence Avenue, SW., Room 107–A, Washington, DC 20250.

Documents related to the 34th session of the CAC will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.*

Karen Stuck, U.S. Codex Manager, invites U.S. interested parties to submit their comments electronically to the following e-mail address: *uscodex@fsis.usda.gov.*

Call-In Number: If you wish to participate in the public meeting for the 34th session of the CAC by conference call, please use call-in number and participant code listed below:

Call-in Number: 1–888–858–2144.

Participant Code: 6208658.

For Further Information About the 34th Session of the CAC Contact: Karen Stuck, U.S. Codex Office, 1400 Independence Avenue, SW., Room 4861, Washington, DC 20250, telephone: (202) 205–7760, fax: (202) 720–3157, e-mail: *uscodex@fsis.usda.gov.*

FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT: Barbara McNiff, U.S. Codex Office, 1400 Independence Avenue, SW., Room 4861, Washington, DC 20250, telephone: (202) 690–4719, fax: (202) 720–3157, e-mail: *Barbara.McNiff@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The CAC was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their implementation by governments, Codex seeks to:

(a) Protect the health of the consumers and ensure fair practices in food trade;

(b) Promote coordination of all food standards work undertaken by international governmental and non governmental organizations;

(c) Determine priorities and initiate and guide the preparation of draft standards through and with the aid of appropriate organizations;

(d) Finalize standards elaborated under (c) above and publish them in a Codex Alimentarius either as regional or worldwide standards, together with international standards already finalized by other bodies under (b) above, wherever this is practicable;

(e) Amend published standards, as appropriate, in the light of new developments.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 34th session of the CAC will be discussed during the public meeting:

- Report by the Chairperson on the 65th session of the Executive Committee
- Reports of the FAO/WHO Coordinating Committees and Appointment of Regional Coordinators
- Proposed Amendments to the Procedural Manual
- Comments on the Proposed Amendments to the Procedural Manual
- Draft Standards and Related Texts at Step 8 of the Procedure (including those submitted at Step 5 with a recommendation to omit Steps 6 and 7 and at Step 5 of the Accelerated Procedure)
- Comments on Draft Standards and Related Texts at Step 5
- Revocation of Existing Codex Standards and Related Texts
- Amendments to Codex Standards and Related Texts
- Proposals for the Elaboration of New Standards and Related Texts and for the Discontinuation of Work
- Matters referred to the CAC by Codex Committees and Task Forces
- Financial and Budgetary Matters
- Strategic Planning of the CAC
- Relations between the CAC and other International Organizations
- Matters arising from the FAO and the WHO

(a) FAO/WHO Project and Trust Fund for Enhanced Participation in Codex

(b) Other Matters arising from the FAO and the WHO

- Election of the Chairperson, Vice-Chairpersons, and other Members of the Executive Committee
- Designation of Countries responsible for Appointing the Chairpersons of Codex Committees and Task Forces and Schedule of Sessions 2012–2013

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access copies of these documents (*see* **ADDRESSES**).

Public Meeting

At the 34th session of the CAC public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Codex Manager for the 34th session of CAC. (*See* **ADDRESSES**). Written comments should state that they relate to activities of the 34th session of the CAC.

USDA Nondiscrimination Statement

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Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, *etc.*) should contact USDA's Target Center at (202) 720–2600 (voice and TTY).

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Additional Public Notification

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FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The Update also is available on the FSIS Web page. Through Listserv and the Web page,

FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.*

Options range from recalls, export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC on March 30, 2011.

Karen Stuck,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2011–8399 Filed 4–7–11; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Final Tropic to Hatch 138 kV Transmission Line Project Environmental Impact Statement and Proposed Grand Staircase-Escalante National Monument Management Plan Amendment

AGENCY: Forest Service, USDA; Bureau of Land Management, USDI and National Park Service, USDI.

ACTION: Notice of availability

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Forest Service (FS), with the Bureau of Land Management (BLM) and National Park Service (NPS) as cooperating agencies, has prepared a Final Environmental Impact Statement (FEIS) for the Tropic to Hatch 138 kV Transmission Line Project and a Proposed Management Plan Amendment (PMPA) for the Grand Staircase-Escalante National Monument, and by this notice is announcing its availability.

DATES: BLM planning regulations state that any person who meets the conditions as described in the regulations may protest the BLM's PMPA/FEIS. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the Environmental Protection Agency publishes this Notice of Availability in the **Federal Register**.

ADDRESSES: Copies of the Tropic to Hatch 138 kV Transmission Line Project FEIS/PMPA for the Grand Staircase-Escalante National Monument have been sent to affected Federal, State, and local government agencies and to other stakeholders. Copies of the FEIS/PMPA are available for public inspection at the following BLM offices: Grand Staircase-Escalante National Monument Headquarters, 190 E. Center Street, Kanab, UT; Kanab Field Office, 318 N 100 E, Kanab, UT; Utah State Office, 440 W 200 S, Salt Lake City, UT. Interested persons may also download and/or review the FEIS/PMPA on the Internet at *http://fs.usda.gov/goto/dixie/projects.*

All protests related to the Grand Staircase Escalante National Monument PMPA must be in writing and mailed to one of the following addresses:

Regular mail	Overnight mail
BLM Director (210), *Attention:* Brenda Williams, P.O. Box 71383, Washington, DC 20035.	BLM Director (210), *Attention:* Brenda Williams, 20 M Street, SE, Room 2134LM, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Baughman, Dixie National Forest, USDA Forest Service, Tropic to Hatch 138kV Transmission Line Project EIS Project Leader, 1789 N. Wedgewood Lane, Cedar City, Utah 84720 or; Matthew Betenson, Assistant Grand Staircase-Escalante National Monument Manager—Planning and Support Services, 190 E Center, Kanab, Utah 84741/phone (435) 644–4309.

SUPPLEMENTARY INFORMATION: The FEIS/PMPA evaluates the environmental effects of the construction, operation, and maintenance of the Tropic to Hatch 138 kV Transmission Line proposed by Garkane Energy Cooperative in Garfield County, Utah, on lands currently managed by the U.S. Forest Service, Dixie National Forest; U.S. Bureau of Land Management, Kanab Field Office, Grand Staircase-Escalante National Monument; State of Utah School and Institutional Trust Lands Administration; and potentially the National Park Service, Bryce Canyon National Park. The transmission line would be approximately 30 miles long, beginning in Tropic, Utah and extending west to Hatch, Utah. Associated Federal actions include Dixie National Forest issuance of a special use easement, Bureau of Land Management issuance of a right-of-way, proposed amendment to the Grand Staircase-Escalante National Monument Management Plan and issuance of a right-of-way, potential Bryce Canyon National Park issuance of a special park permit for a right-of-way, and Utah School and Institutional Trust Lands Administration issuance of a right-of-way for construction and operation of the project. The Preferred Alternative in the FEIS/PMPA would amend the Grand Staircase-Escalante National Monument Management Plan (2000) by: (a) Designating a 300-foot wide Passage Zone along an approximate three and three-quarter mile path through an area currently designated as Primitive Zone in the Monument Management Plan, and (b) changing the existing VRM Class designation from Class II to Class III within this linear area. The plan amendment decisions would be necessary to accommodate the potential new transmission line.

Comments on the Draft RMP/Draft EIS Plan Amendment were received from the public and from internal interagency governmental review. These comments were considered and incorporated as appropriate into the FEIS/PMPA. Public comments resulted in the addition of clarifying text, but did not significantly change the FEIS/PMPA. This final document is expected to be used in conjunction with the Draft EIS published in December 2009. The two documents, together, make up the FEIS/PMPA for the Tropic to Hatch 138 kV Transmission Line.

Instructions for filing a protest with the Director of the BLM regarding the FEIS/PMPA may be found in the "Dear Reader Letter" of the Tropic to Hatch 138 kV Transmission Line FEIS and at 43 CFR 1610.5–2. E-mail and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the e-mail or faxed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests

to the attention of the BLM protest coordinator at (202) 912–7212, and e-mails to *Brenda_Hudgens-Williams@blm.gov.*

All protests, including the follow-up letter to e-mails or faxes, must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above. Before including your phone number, e-mail address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 42 U.S.C. 4321–4347, 40 CFR 1500–1508, 43 CFR 1610.2, 43 CFR 1610.5, and 36 CFR 220.

Dated: March 24, 2011.

Robert G. MacWhorter,

Forest Supervisor—Dixie National Forest.

[FR Doc. 2011–8062 Filed 4–7–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Survey of Income and Program Participation (SIPP) 2011 Re-engineered SIPP—Field Test

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before June 7, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patrick J. Benton, Census Bureau, Room HQ–6H045, Washington, DC 20233–8400, (301) 763–4618.

SUPPLEMENTARY INFORMATION

I. Abstract

The Census Bureau plans to conduct a field test for the Re-engineered SIPP from January to May of 2011. The SIPP is a household-based survey designed as a continuous series of national panels. The SIPP is molded around a central "core" of labor force and income questions that remain fixed throughout the life of the panel and then supplemented with questions designed to address specific needs. Examples of these types of questions include medical expenses, child care, retirement and pension plan coverage, marital history, and others.

The 2011 Re-engineered SIPP instrument is a revision of the 2010 Re-SIPP test instrument, in which respondents were interviewed during the 2010 Dress Rehearsal Re-SIPP Field Test. The Re-engineered SIPP will interview respondents in one year intervals, using the previous calendar year as the reference period.

The content of the Re-engineered SIPP will match that of the 2008 Panel SIPP very closely. The Re-engineered SIPP will not contain free-standing topical modules. However, a portion of the 2008 Panel topical module content will be integrated into the Re-engineered SIPP interview. The Re-engineered SIPP will use an Event History Calendar (EHC) which records dates of events and spells of coverage. The EHC should provide increased accuracy to dates reported by respondents.

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population, which the SIPP has provided on a continuing basis since 1983. The SIPP has measured levels of economic well-being and permitted changes in these levels to be measured over time.

Approximately 4,000 households will be selected for the 2011 Re-engineered SIPP field test, of which, 3200 households are expected to be interviewed. We estimate that each household contains 2.1 people aged 15 and above, yielding approximately 6,720 person-level interviews in this field test. Interviews take 60 minutes on average. The total annual burden for 2011 Re-engineered SIPP field test interviews would be 6,720 hours in FY 2011.

II. Method of Collection

The 2011 Re-engineered SIPP field test instrument will consist of one household interview which will reference the calendar year 2010. The interview is conducted in person with all household members 15 years old or over using regular proxy-respondent rules.

III. Data

OMB Control Number: 0607–0957.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 6,720 people.

Estimated Time per Response: 60 minutes per person on average.

Estimated Total Annual Burden Hours: 6,720.

Estimated Total Annual Cost: The only cost to respondents is their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 4, 2011.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–8362 Filed 4–7–11; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1751]

Approval for Subzone Expansion and Expansion of Manufacturing Authority; Foreign-Trade Subzone 29F; Hitachi Automotive Systems Americas, Inc. (Automotive Components); Harrodsburg, KY

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Louisville and Jefferson County Riverport Authority, grantee of Foreign-Trade Zone 29, has requested an expansion of the subzone and the scope of manufacturing authority on behalf of Hitachi Automotive Systems Americas, Inc. (Hitachi), operator of Subzone 29F at the Hitachi facility in Harrodsburg, Kentucky (FTZ Docket 38–2010, filed 5–20–2010);

Whereas, notice inviting public comment has been given in the **Federal Register** (75 FR 29723–29724, 5–27–2010) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand the subzone and the scope of manufacturing authority under zone procedures within Subzone 29F, as described in the application and **Federal Register** notice, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC this 31st day of March 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–8448 Filed 4–7–11; 8:45 am]

BILLING CODE 3610–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1748]

Approval for Extension of Subzone Status and Manufacturing Authority; Foreign-Trade Subzone 169A; Aso LLC (Adhesive Bandages); Sarasota County, FL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Manatee County Port Authority, grantee of Foreign-Trade Zone (FTZ) 169, has requested to indefinitely extend subzone status and manufacturing authority on behalf of Aso LLC (Aso) to perform adhesive bandage manufacturing within FTZ Subzone 169A in Sarasota County, Florida, (FTZ Docket 55–2011, filed 9/23/2010);

Whereas, notice inviting public comment has been given in the **Federal Register** (75 FR 59695, 9/28/2010) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to extend the subzone and manufacturing authority for the production of adhesive bandages under zone procedures within Subzone 169A, as described in the application and **Federal Register** notice, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC this 31st day of March, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–8443 Filed 4–7–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1749]

Expansion of Foreign-Trade Zone 133; Quad-Cities, IL/IA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Quad-City Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 133, submitted an application to the Board for authority to expand FTZ 133 in the Quad-Cities, Iowa/Illinois area, adjacent to the Quad-Cities Customs and Border Protection port of entry (FTZ Docket 15–2010, filed 3/5/2010);

Whereas, notice inviting public comment has been given in the **Federal Register** (75 FR 12729, 3/17/2010) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 133 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and further subject to a sunset provision that would terminate authority on March 31, 2018 for Sites 1, 3, 4 and 5 where no activity has occurred under FTZ procedures before that date.

Signed at Washington, DC this 31st day of March 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–8452 Filed 4–7–11; 8:45 am]

BILLING CODE 3610–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1750]

Grant of Authority for Subzone Status; Grundfos Pumps Manufacturing Corporation (Multi-Stage Centrifugal Pumps); Allentown, PA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Lehigh Valley Economic Development Corporation, grantee of Foreign-Trade Zone 272, has made application to the Board for authority to establish a special-purpose subzone at the multi-stage centrifugal pump manufacturing facility of Grundfos Pumps Manufacturing Corporation, located in Allentown, Pennsylvania (FTZ Docket 21–2010, filed 3–24–2010);

Whereas, notice inviting public comment has been given in the **Federal Register** (75 FR 15679, 3–30–2010) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to the manufacturing of multi-stage centrifugal pumps at the Grundfos Pumps Manufacturing Corporation facility located in Allentown, Pennsylvania (Subzone 272A), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC this 31st day of March 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–8449 Filed 4–7–11; 8:45 am]

BILLING CODE 3610–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–801, A–823–801]

Solid Urea From the Russian Federation and Ukraine: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 1, 2010, the Department of Commerce (the Department) initiated the third sunset reviews of the antidumping duty orders on solid urea from the Russian Federation (Russia) and Ukraine, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-Year ("Sunset") Review,* 75 FR 74685 (December 1, 2010) (*Notice of Initiation*). The Department has conducted expedited (120-day) sunset reviews of these orders. As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping as indicated in the "Final Results of Reviews" section of this notice.

DATES: *Effective Date:* April 8, 2011.

FOR FURTHER INFORMATION: Dustin Ross or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0747 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2010, the Department published the notice of initiation of the sunset reviews of the antidumping duty orders [1] on solid urea from Russia and Ukraine pursuant to section 751(c) of the Act. *See Notice of Initiation.*

The Department received notices of intent to participate in these sunset reviews from the domestic interested parties, the urea-producing members of the Ad Hoc Committee of Domestic Nitrogen Producers, CF Industries, Inc., and PCS Nitrogen Fertilizer, L.P., within the 15-day period specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested-party status under section 771(9)(C) of the Act as manufacturers of a domestic like product for each proceeding.

The Department received complete substantive responses to the *Notice of Initiation* from the domestic interested parties within the 30-day period specified in 19 CFR 351.218(d)(3)(i). The Department received no substantive responses from any respondent interested parties. In accordance with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting expedited (120-day) sunset reviews of the antidumping duty orders on solid urea from Russia and Ukraine.

Scope of the Orders

The merchandise subject to the orders is solid urea, a high-nitrogen content fertilizer which is produced by reacting ammonia with carbon dioxide. The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item number 3102.10.00.00. Previously such merchandise was classified under item number 480.3000 of the Tariff Schedules of the United States. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the orders is dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the "Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Orders on Solid Urea From the Russian Federation and Ukraine" from Gary Taverman to Ronald K. Lorentzen dated concurrently with this notice (Issues and Decision Memo), which is hereby adopted by this notice. The issues discussed in the Issues and Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the orders were revoked. Parties can find a complete discussion

[1] *Antidumping Duty Order; Urea From the Union of Soviet Socialist Republics,* 52 FR 26367 (July 14, 1987); *Solid Urea From the Union of Soviet Socialist Republics; Transfer of the Antidumping Duty Order on Solid Urea From the Union of Soviet Socialist Republics to the Commonwealth of Independent States and the Baltic States and Opportunity to Comment,* 57 FR 28828 (June 29, 1992).

of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room 7046 of the main Department of Commerce building.

In addition, a complete version of the Issues and Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Issues and Decision Memo are identical in content.

Final Results of Reviews

The Department determines that revocation of the antidumping duty orders on solid urea from Russia and Ukraine would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Company	Weighted-average margin (percent)
Soyuzpromexport	(SPE) 68.26
Phillipp Brothers, Ltd., and Phillipp Brothers, Inc. (Phibro)	53.23
All Others	64.93

Notification Regarding APO

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

The Department is issuing and publishing the final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: March 31, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–8446 Filed 4–7–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA312

Atlantic Coastal Fisheries Cooperative Management Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that an Exempted Fishing Permit (EFP) application contains all of the required information and warrants further consideration. This EFP application would exempt commercial fishing vessels from the following Federal American lobster regulations: (1) Gear specifications (including escape vents, ghost panel and maximum trap size; (2) trap limits; and (3) trap tags to allow 11 Federally permitted vessels to utilize a combined total of 35 modified lobster traps to catch juvenile lobsters, (30–50 mm carapace length), throughout lobster management area 3 (Area 3), in an attempt to understand patterns of larval dispersal and settlement. This proposed project would be conducted by the Atlantic Offshore Lobster Association (AOLA) in conjunction with scientists and the fishing industry.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before April 25, 2011.

ADDRESSES: Comments on this notice may be submitted by e-mail. The mailbox address for providing e-mail comments is *NERO.EFP@noaa.gov.* Include in the subject line "Comments on AOLA Lobster EFP." Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on AOLA Lobster EFP."

- Fax: (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Carol Shé, Fishery Policy Analyst, 978–282–8464, *Carol.She@noaa.gov.*

SUPPLEMENTARY INFORMATION: AOLA submitted a complete application for an EFP on March 11, 2011, to conduct commercial fishing activities that the regulations would otherwise restrict. This EFP application would exempt commercial fishing vessels from the following Federal regulations: gear specifications (including escape vents, ghost panel and maximum trap size) specified under 50 CFR 697.21(c)(4), 697.21(d) and 697.21(e)(2)(ii); trap limits specified under § 697.19(b)(5); and trap tags specified under § 697.19(f). The EFP would authorize 11 Federally permitted vessels to be exempted from parts of the Federal lobster regulations to allow the participating vessels to fish modified lobster traps, exceed trap limits, and deploy the modified traps without trap tags in an attempt to formalize the anecdotal presence of young lobsters. Some lobster scientists believe that larvae will only survive in the inshore fishery due to the depths and available light, and that there are no small lobsters offshore; however, data resulting from this project are intended to determine whether there are new lobster nursery grounds offshore.

This project, including the lobster handling protocols, was initially developed in consultation with University of New Hampshire scientists. To the greatest extent practicable, these handling protocols are designed to avoid unnecessary adverse environmental impact on lobsters involved in this project, while achieving the data collection objectives of this project. AOLA will work in conjunction with scientists and the fishing industry to build and test various trap modifications to determine the optimal design for use in offshore waters. The modified gear may exceed the Federal maximum trap size restrictions, include smaller wire mesh sizes, modified entrance heads/rings, closed or modified escape vents, and cobble acting as shelter material. The deployment of the experimental traps throughout lobster management area 3 (Area 3) statistical areas 464, 522, 561, 562, 525, 526, 533, 537, 613, 616, and 622, would begin in April 2011 and extend through August 2012. AOLA would submit progress reports in December 2011 and September 2012, since the project would exceed 1 year. Participating vessels would include between one and three experimental lobster traps as part of a commercial lobster trap trawl deployed under routine industry conditions. Modified traps would remain in the water for up to 6 consecutive months (182 days), being hauled approximately weekly

following the normal fishing schedule of the participating vessels. The gear would be compliant with the Atlantic Large Whale Take Reduction Plan; therefore, impacts to protected resources would be negligible. Subsequently, AOLA will provide data necessary to assist in better future management of the lobster fishery.

The activities occurring in Area 3 statistical areas are not anticipated to have any more environmental impacts than those already occurring as part of a commercial lobster trap trawl deployed under usual industry conditions. Impacts to the lobster resource would be negligible. Given the small mesh and entrance heads, the modified gear is not expected to catch legal lobsters. Any sublegal lobsters caught would briefly be retained onboard only for the purposes of recording their size, sex, and presence of shell disease, before being promptly released back into the ocean. There should be minimal impact to bycatch species due to the use of small mesh and small entrance heads and, in addition, all bycatch species hauled from modified gear would be returned promptly to the ocean. Likewise, there would not be significant impacts on benthic habitats. As the gear would be compliant with the Atlantic Large Whale Take Reduction Plan and would be deployed under usual industry conditions, impacts to protected resources would be negligible.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 4, 2011.

Margo Schulze-Haugen,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–8451 Filed 4–7–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA290

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Extension of Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that two requests for extensions to exempted fishing permits (EFPs) contain all of the required information and warrant further consideration. The Assistant Regional Administrator previously made a determination that the activities authorized under the initial EFPs, issued on June 17, 2010, are consistent with the goals and objectives of the Monkfish Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to grant extensions to the original EFPs. The EFP extensions would enable vessels to harvest monkfish granted through the Monkfish Research Set-Aside (RSA) Program, and grants exemptions from the monkfish days-at-sea (DAS) possession limit in the Southern Fishery Management Area (SFMA). The EFP issued to the gillnet tie-down study also exempts vessels from the monkfish minimum fish size limits for research purposes only.

NMFS is soliciting comment from interested parties on these EFP extension requests.

DATES: Comments must be received on or before April 25, 2011.

ADDRESSES: You may submit written comments by any of the following methods:

- *E-mail: nero.efp@noaa.gov.* Include in the subject line "Comments on GMRI Monkfish RSA EFP Extensions."
- *Mail:* Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on GMRI Monkfish RSA EFP Extensions."
- *Fax:* (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Jason Berthiaume, Fishery Management Specialist, 978–281–9177.

SUPPLEMENTARY INFORMATION: On February 22, 2011, the Gulf of Maine Research Institute (GMRI) requested an extension to EFPs issued to GMRI in support of two projects funded under the 2010 Monkfish RSA Program. The EFPs authorize vessels to conduct compensation fishing in the SFMA using 2010 monkfish RSA DAS and to temporarily retain undersize monkfish for data collection purposes. The applicant requests an extension because the participating vessels were unable to use all of their allocated RSA DAS awarded to GMRI for the 2010 fishing year (FY). GMRI states the vessels were unable to use all of their RSA DAS because the EFPs were not issued until June 17, 2010, and the fishermen thereby missed the peak of the spring fishing season. Additionally, the fall monkfish fishery was less productive than expected because of skate bycatch issues. As a result, fishermen used fewer 2010 monkfish RSA DAS than expected. In addition to compensation fishing, research would be ongoing and, therefore, the previously authorized exemption from monkfish minimum size limits for the gillnet tie-down project would be extended as well. The scope and scale of the original exemptions will not change. Regulations at 50 CFR 648.92(c)(i)(v) allow unused monkfish RSA DAS to carry-over into the following FY.

The tagging project was awarded 313 monkfish DAS under the 2010 Monkfish RSA Program, with a total landings cap of 1,126,800 lb (511,108 kg) of whole monkfish. Compensation fishing would be extended through the 2011 FY until the cumulative monkfish RSA landings for this project in FYs 2010 and 2011 reach 1,126,800 lb (511,108 kg) of whole monkfish (equivalent), or until the awarded 2010 DAS have been fully utilized, whichever occurs first. The tie-down project was awarded 162 monkfish DAS under the 2010 Monkfish RSA Program, with a total landings cap of 583,200 lb (264,535 kg) of whole monkfish. Compensation fishing would be extended through the 2011 FY until the cumulative monkfish RSA landings for this project in FYs 2010 and 2011 reach 583,200 lb (264,535 kg) of whole monkfish (equivalent), or until the awarded 2010 DAS have been fully utilized, whichever occurs first. This would extend the expiration date of the EFPs from April 30, 2011, to April 30, 2012. No further extensions to these EFPs would be made. Additionally, NMFS is considering imposing a cap on monkfish DAS possession limit exemptions for vessels operating under the monkfish RSA program due to

potential effects that such exemptions may have on monkfish catch rates for non-RSA vessels.

A detailed description of the initial EFP proposals were provided in previous **Federal Register** notices (April 16, 2010, 75 FR 19938) and is not repeated here. The applicant may request minor modifications to the EFPs throughout the year. EFP modifications may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP requests. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 4, 2011.

Margo Schulze-Haugen,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–8447 Filed 4–7–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA357

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a meeting of the Reef Fish Advisory Panel.

DATES: The meeting will convene at 9 a.m. on Monday April 25, 2011 and conclude by 5 p.m.

ADDRESSES: The meeting will be held at the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Population Dynamics Statistician; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Reef Fish Advisory Panel will meet to review and provide recommendations to the Council on Reef Fish Amendment 32. This amendment contains actions to establish a rebuilding plan for gag, set recreational bag limits, size limits and closed seasons for gag/red grouper in 2012, consider a commercial gag and shallow-water grouper quota adjustment to account for dead discards, make adjustment to multi-use IFQ shares in the grouper individual fishing quota program, reduce the commercial gag size limit, modify the offshore time and areas closures, and establish gag, red grouper, and shallow-water grouper accountability measures. The Panel will also review and provide recommendations on the Generic Annual Catch Limits/Accountability Measures Amendment. This amendment contains actions to delegate management of selected species to other agencies, remove selected species from the fishery management plans, group species for purposes of setting annual catch limits and annual catch targets, establish an acceptable biological catch control rule, establish an annual catch limit/annual catch target control rule, establish a generic framework procedure for implementing management changes, establish the initial specification of annual catch limits and annual catch targets for stocks and stock groups still in need of such specification, establish the apportionment of the black grouper, yellowtail snapper, and mutton snapper stocks between the Gulf and South Atlantic Council jurisdictions, set a commercial and recreational allocation of black grouper within the Gulf Council's jurisdiction, and establish accountability measures to keep catch levels within their annual catch limits or take corrective action if they exceed the limits.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630.

Although other non-emergency issues not on the agenda may come before the Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Advisory Panel will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (*see* **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: April 4, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–8351 Filed 4–7–11; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add a product and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services previously furnished by such agencies.

Comments Must Be Received on or Before: 5/9/2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities.

The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

Cotter Pin Assortment

NSN: 5315–00–598–5916.
NPA: Good Vocations, Inc., Macon, GA.
Contracting Activity: General Services Administration, Fort Worth, TX.
Coverage: B-List for the Broad Government requirement as aggregated by the General Services Administration.

Services

Service Type/Location: Janitorial Service. U.S. Army Corps of Engineers Records Holding Area (RHA), Transatlantic Programs Center, 188 Brooke Road, Winchester, VA.
NPA: NW Works, Inc., Winchester, VA.
Contracting Activity: Dept of the Army, W31R Endiv Transatlantic, Winchester, VA.
Service Type/Service Location: Base Operation Support Service. Department of Logistics, Fort George D. Meade, MD.
NPA: Skookum Educational Programs, Bremerton, WA.
Contracting Activity: Department of the Army, Mission and Installation Contracting Command, Fort Eustis, VA.
Service Type/Service Location: Facilities Maintenance Service. United States Coast Guard Cutter MACKINAW Vessel and Shore Facility, Cheboygan, MI.
NPA: Grand Traverse Industries, Inc., Traverse City, MI.
Contracting Activity: United States Coast Guard Maintenance & Logistics Command—Atlantic, Norfolk, VA.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for deletion from the Procurement List.

End of Certification

The following products and services are proposed for deletion from the Procurement List:

Products

Anti-fatigue Mat, Recycled content

NSN: 7220–01–582–6232—Gray 2x3′.
NSN: 7220–01–582–6234—Gray 3x5′.
NPA: Wiscraft, Inc., Milwaukee, WI.
Contracting Activity: General Services Administration, Fort Worth, TX.

Services

Service Types/Locations:
Janitorial/Custodial. Veterans Integrated Support Network 16, Ridgeland, MS.
Administrative Services. Veterans Affairs Medical Center, 1500 East Woodrow Wilson Drive, Jackson, MS.
NPA: Goodwill Industries of Mississippi, Inc., Ridgeland, MS
Contracting Activity: Department of Veterans Affairs, NAC, Hines, IL.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2011–8386 Filed 4–7–11; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds a service to the Procurement List that will be provided by a nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: Effective Date: 5/9/2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On 1/28/2011 (76 FR 5142–5143), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

Comments were received from two individuals who questioned the capability of the nonprofit agency to perform all of the required services on the contract and the suitability of this project for people who are blind or severely disabled. Both individuals expressed concerns about the pay and benefits package of the nonprofit agency.

The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee) administers the AbilityOne® Program under the authority of the Javits-Wagner-O'Day Act. Committee responsibilities include identifying products and services produced or provided by qualified nonprofit agencies employing people who are blind or severely disabled that the Committee determines are suitable for procurement by the Government. In accordance with Committee statutory and regulatory requirements, each project considered for addition to the Procurement List is reviewed by the Committee for suitability; particularly employment potential, nonprofit agency qualifications and level of impact on the current contractor.

The project requires a range of services that will provide employment opportunities for people with severe disabilities who otherwise face significant barriers to employment. These employees will be paid service contract wages in accordance with the Service Contract Act. The qualified nonprofit agency designated to perform the project is a capable organization with experience in fulfilling this type of service requirements, and will comply with Department of Labor requirements including wage determination rates. People who are blind or have other significant disabilities have the ability to perform the requisite job functions, and will be supported with training and supervision. If necessary, certain job

functions on this project may be subcontracted.

This has been considered by the Committee in their review of the suitability of this project for addition to the Procurement List

After consideration of the material presented to it concerning capability of qualified nonprofit agency to furnish the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will provide the service to the Government.

2. The action will result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Base Operations Support Service, Support Service Directorate of Public Works (DPW)/Directorate of Logistics (DOL), 330 Engineer Avenue, Carlisle Barracks, Carlisle, PA.

NPA: The Chimes, Inc., Baltimore, MD.

Contracting Activity: Dept of the Army, XR W6BA ACA NRCC, Fort Eustis, VA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2011–8387 Filed 4–7–11; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, April 13, 2011; 11 a.m.—12 Noon

PLACE: Room 410, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the public.

Matter To Be Considered

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: April 5, 2011.

Todd A Stevenson,

Secretary.

[FR Doc. 2011–8481 Filed 4–6–11; 11:15 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, April 13, 2011, 10 a.m.–11.a.m.

PLACE: Room 410, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public

Matter To Be Considered

Decisional Matter: Toddler Beds—Final Rule.

A live Webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: April 5, 2011.

Todd A. Stevenson,

Secretary.

[FR Doc. 2011–8480 Filed 4–6–11; 11:15 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 76, No. 63, Friday, April 1, 2011, pages 18189–18190.

ANNOUNCED TIME AND DATE OF MEETING: Wednesday, April 6, 2011, 10 a.m.–11 a.m.

MEETING CANCELED.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: April 5, 2011.

Todd A. Stevenson,

Secretary.

[FR Doc. 2011–8482 Filed 4–6–11; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

List of Institutions of Higher Education Ineligible for Federal Funds

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: This document is published to identify institutions of higher education that are ineligible for contracts and grants by reason of a determination by the Secretary of Defense that the institution prohibits or in effect prevents military recruiter access to the campus, students on campus or student directory information. It also implements the requirements set forth in section 983 of title 10, United States Code, and 32 CFR part 216. The institutions of higher education so identified are:

Vermont Law School, South Royalton, Vermont.

William Mitchell College of Law, St. Paul, Minnesota.

ADDRESSES: Director for Accession Policy, Office of the Under Secretary of Defense for Personnel and Readiness, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Paul Nosek, (703) 695–5529.

Dated: April 1, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–8377 Filed 4–7–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Termination of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Termination of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), 41 CFR 102–3.55(a)(1), and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), effective June 11, 2011 the Department of Defense gives notice that it is terminating the Transformation Advisory Group.

FOR FURTHER INFORMATION CONTACT: Contact Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–601–6128.

Dated: April 1, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–8378 Filed 4–7–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the ʻĪao Stream Flood Control Project, Wailuku, Maui, HI

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the U.S. Army Corps of Engineers (USACE) gives notice that a joint Environmental Impact Statement (EIS) is being prepared for the proposed action to correct a design deficiency in the existing ʻĪao Stream Flood Control Project, Wailuku, Maui, HI. This effort is being proposed under Section 203 of the Flood Control Act of 1968 (Pub. L. 90–483) and is necessary to provide the authorized level of reduced flood risk to the town of Wailuku. The County of Maui, Department of Public Works (DPW) is the non-Federal sponsor and the lead agency for compliance with the Hawai'i law on Environmental Impact Statements.

DATES: Comments and suggestions on the scope of issues to be addressed in the Draft EIS (DEIS) should be received on or before May 9, 2011.

ADDRESSES: Send written comments to the U.S. Army Corps of Engineers, Honolulu District, ATTN: Nani Shimabuku, Project Manager, Civil and Public Works Branch (CEPOH–PP–C), Building 230, Fort Shafter, HI 96858–5440. Submit electronic comments to *iaostreameis@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Further information is available on the Web site for the proposed action at *http://www.iaostreameis.com* or from Ms. Nani Shimabuku, Project Manager, Telephone: (808) 438–2940, E-mail: *iaostreameis@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Proposed Action.* The existing ʻĪao Stream Flood Control Project includes a debris basin, diversion levees, and channel improvements along the lower 2.5 miles of the ʻĪao Stream in Wailuku, Maui, and drains an area of approximately 10 square miles. The existing project was designed to provide the town of Wailuku with protection against a 222-year flood (0.5% chance of flooding in any given year). Since the existing project was completed in 1981, numerous storm events involving high velocity flows within the steeply sloped channel have resulted in major erosion of the streambed, undermining the banks and the levees. The proposed action would correct the design deficiencies in the existing project in order to provide the authorized level of reduced flood risk.

2. *Alternatives.* In March 2009, USACE released a draft Environmental Assessment (DEA) that analyzed several alternatives to address the existing project's design deficiencies. During the public comment period, the public, resource agencies, and stakeholders raised concerns over potential indirect and cumulative significant impacts associated with impairment of groundwater recharge, sediment loading impacts to native aquatic species and habitats, and other issues. Based on these comments, USACE decided to prepare an EIS. The EIS will expand the alternatives analysis in the DEA to consider a full range of structural and nonstructural flood risk management alternatives that meet the proposed action's purpose and need and incorporate measures to avoid and minimize impacts to native aquatic species, stream habitat, and other resources. Design features currently under consideration include, but are not limited to, the incorporation of a roller-compacted channel design with low-flow invert; grade control structures; stilling basin areas; groundwater infiltration areas; natural erosion protection measures; and pooling areas to support native aquatic species.

3. *Scoping and Public Involvement.* As part of the scoping process, all affected Federal, State, and local agencies, Native Hawaiian organizations, private organizations, and the public are invited to comment on the scope of the EIS.

Since a comprehensive public review process was completed in association with the DEA for the proposed action, the EIS scoping process will not include a formal public scoping meeting. The public comments submitted on the DEA have been compiled and will be considered during the development of the EIS. A summary of those comments is available on the Web site for the proposed action at *http://www.iaostreameis.com.* Any additional comments received will be considered along with those already summarized. To be most helpful, comments should clearly describe specific environmental topics or issues which the commenter believes the document should address.

4. *Other Environmental Review Requirements.* To the extent practicable, NEPA and HRS Chapter 343 requirements will be coordinated in the preparation of the EIS. Consistent with Hawai'i Revised Statutes (HRS) Chapter 343, a State EIS Preparation Notice (EISPN) will be published concurrently.

5. *Availability.* The DEIS is currently scheduled to be available for public review and comment in the summer of 2012.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2011–7735 Filed 4–7–11; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Vocational Rehabilitation Services Projects for American Indians With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information

Vocational Rehabilitation Services Projects for American Indians with Disabilities; Notice inviting applications for new awards for fiscal year (FY) 2011.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.250H.

Dates:

Applications Available: April 8, 2011.

Deadline for Transmittal of Applications: June 7, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to provide vocational rehabilitation (VR) services to American Indians with disabilities who reside on or near Federal or State reservations, consistent with their individual strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that they may prepare for and engage in gainful employment, including self-employment, telecommuting, or business ownership.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 121(b)(4) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 741(b)(4)).

Competitive Preference Priority: For FY 2011, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award an additional 10 points to an application that meets this priority.

This priority is:

Continuation of Previously Funded Tribal Programs

In making new awards under this program, we give priority consideration to applications for the continuation of VR services programs that have been funded under the Vocational Rehabilitation Services Projects for American Indians with Disabilities program.

Program Authority: 29 U.S.C. 741.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, 82, 84, 85, and 97. (b) The regulations for this program in 34 CFR parts 369 and 371.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Department expects to set aside $37,449,000 for the Vocational Rehabilitation Services Projects for American Indians with Disabilities program for FY 2011, of which we intend to use an estimated $3,500,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process before the end of the current fiscal year, if Congress appropriates funds for this program.

Estimated Range of Awards: $365,000–$740,000.

Estimated Average Size of Awards: $550,000.

Estimated Number of Awards: 6.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* The governing bodies of Indian Tribes (and consortia of those governing bodies) located on Federal and State reservations.

Note: The term "Indian Tribe" is defined in the program regulations at 34 CFR 371.4 as "any Federal or State Indian band, rancheria, pueblo, colony, and community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act)."

The term "consortium" is defined in 34 CFR 371.4 to mean two or more eligible governing bodies of Indian Tribes that apply for an award under this program by either: (1) Designating one governing body to apply for the grant; or (2) establishing and designating a separate legal entity to apply for a grant.

2. *Cost Sharing or Matching:* See 34 CFR 371.40.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.250H.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Other: In its application, an applicant must describe how it will meet the Special Application Requirements stated at 34 CFR 371.21.

3. *Submission Dates and Times:*

Applications Available: April 8, 2011.

Deadline for Transmittal of Applications: June 7, 2011.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This competition is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System(DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue

Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3–Step Registration Guide (*see http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications

We are participating as a partner in the Governmentwide Grants.gov Apply site. The Vocational Rehabilitation Services Projects for American Indians with Disabilities, CFDA number 84.250H, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Vocational Rehabilitation Services Projects for American Indians with Disabilities at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.250, not 84.250H).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- If you submit your application electronically, you must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your

application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. Submission of Paper Applications by Mail

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.250H) LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.250H) 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package. The selection criteria may total 100 points, plus the 10 competitive preference priority points (see Section I. *Competitive Preference Priority*).

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 874.14 and 0.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established three performance measures for the Vocational Rehabilitation Services Projects for American Indians with Disabilities program. The measures are (1) the percentage of individuals who leave the program with an employment outcome, (2) the percentage of projects that demonstrate an average annual cost per employment outcome of no more than $35,000, and (3) the percentage of projects that demonstrate an average annual cost per participant of no more than $10,000. Each grantee must annually report its performance on these measures through the Annual Progress Reporting Form (APR Form) for the American Indian Vocational Rehabilitation Services (AIVRS) program.

Job Training and Employment Common Measures: In addition, this program is part of the job training and employment common measures initiative. The common measures for job training and employment programs targeting adults are (1) entered

employment (percentage employed in the first quarter after program exit); (2) retention in employment (percentage of those employed in the first quarter after exit that were still employed in the second and third quarters after program exit); (3) average weekly earnings (average earnings of those participants who are employed in the first, second, and third quarters after the exit quarter); and (4) the annual cost per participant.

The AIVRS Annual Progress Reporting Form was revised in 2008 to collect data needed to assess the Vocational Rehabilitation Services Projects for American Indians with Disabilities program's performance on supplemental measures that are comparable to the job training and employment common measures. Each grantee will be required to collect and report data for these supplemental measures as part of the annual performance report requirement, including information on: (1) The number of individuals whose case record has not been closed, but have not received project services for 90 consecutive calendar days, (2) the number of eligible individuals who were employed three months after achieving an employment outcome, (3) the number of eligible individuals who were employed six months after achieving an employment outcome, (4) the average weekly earnings at entry, and (5) the average weekly earnings of the individuals whose employment outcomes resulted in earnings.

Note: For purposes of this section VI. 4., the term "employment outcome" has the meaning provided in 34 CFR 369.4.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made "substantial progress toward meeting the objectives in its approved application." This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: August Martin, U.S. Department of Education, 400 Maryland Avenue, SW., room 5049, Potomac Center Plaza (PCP), Washington, DC 20202–2800. Telephone: (202) 245–7410 or by e-mail: *august.martin@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.*

Dated: April 5, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–8455 Filed 4–7–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

The Federal Student Aid Programs Under Title IV of the Higher Education Act of 1965, as Amended

AGENCY: Department of Education.

ACTION: Notice inviting letters of application for participation in the Quality Assurance Program.

SUMMARY: The Secretary of Education invites institutions of higher education that may wish to participate in the Quality Assurance Program, under section 487A(a) of the Higher Education Act of 1965, as amended (HEA), to submit a letter of application to participate in the program.

DATES: Letters of application may be submitted any time after April 8, 2011.

ADDRESSES: Institutions may apply to participate in the Quality Assurance Program by addressing a letter of application to Barbara Mroz, Federal Student Aid, U.S. Department of Education, and submitting this letter of application electronically to the Quality Assurance mailbox at: *Quality.Assurance@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Warren Farr, Federal Student Aid, U.S. Department of Education, 830 First Street, NE., UCP–3, Room 43H2, Washington, DC 20202–5232. Telephone: (202) 377–4380, or by e-mail: *Warren.Farr@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audio tape or computer diskette) on request by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Background

Institutions of higher education are invited to join the Department in an effort to simplify regulations and administrative processes for the Federal Student Aid Programs authorized by Title IV of the Higher Education Act of 1965, as amended (HEA). The goal of the Quality Assurance Program is to provide tools that help all institutions of higher education participating in these programs (Title IV, HEA programs) to promote better service to students, compliance with Title IV requirements, and continuous improvement in program delivery. The Quality Assurance Program encourages and provides tools to assist participating institutions to develop and implement their own comprehensive systems to verify student financial aid application data, and continually assess compliance with Federal requirements.

Pursuant to section 487A(a)(3) of the HEA (20 U.S.C. 1094a(a)(3)), the Secretary is authorized to waive for any institution participating in the Quality Assurance Program any regulations dealing with reporting or verification requirements, thus providing participating institutions with regulatory flexibility for the verification of student data, and encouraging alternative approaches that improve award accuracy.

The Secretary believes that the data provided to the Department by the institutions participating in the Quality

Assurance Program have influenced Federal verification policies. The data provided by participating institutions have addressed not only the accuracy of student aid awards and payments, but also the management of student aid offices and the delivery of services to students.

Features of the Program

The Quality Assurance Program gives institutions tools and techniques to assess, measure, analyze, correct, and prevent compliance problems. The Institutional Student Information Record (ISIR) Analysis Tool provides participating institutions with data for achieving targeted verification outcomes, as explained below. The evaluation tools that QA schools must complete ("FSA Assessments") help schools develop policies and procedures as well as strengthen compliance.

The Secretary encourages institutions participating in the Quality Assurance Program to evaluate their verification policies and procedures and adopt improvements to those procedures. Institutions measure performance and test the effectiveness of their verification program by using the Department's ISIR Analysis Tool. The ISIR Analysis Tool is a Web-based software product that provides financial aid administrators with an in-depth analysis of their applicant population. It allows them to see not only which elements on the student's Free Application for Federal Student Aid (FAFSA) changed when verified, but also what impact these changes have on the student's Expected Family Contribution (EFC) and aid eligibility. This analysis helps financial aid administrators develop a targeted institutional verification program, which ultimately makes the financial aid process easier for students, while ensuring accountability and program integrity.

The Quality Assurance Program also helps institutions make improvements beyond verification. By using the FSA Assessments, school staff in the financial aid office can, through teamwork, set goals for excellence in all areas of financial aid delivery on their campus. Another benefit of participating in the Quality Assurance Program is that both parties become engaged in promoting program integrity, stewardship, and customer service in the administration and delivery of the student financial assistance programs, thereby producing a more positive customer experience.

Invitation for Applications

The Secretary invites institutions of higher education that administer one or more Title IV, HEA programs to submit a letter of application to participate in the Quality Assurance Program. Institutions that currently participate in the program may continue to do so without submitting a new letter of application. The Secretary will review the letter of application, which should reflect the institution's commitment to:

- Improve the accuracy of institutional verification programs;
- Increase institutional flexibility in managing student aid funds, while maintaining accountability for the proper use of those funds; and
- Encourage the development of innovative management approaches to strengthen stewardship by using the FSA Assessments.

Review Process

The Department will screen prospective participants to determine if the institution meets general Title IV, HEA eligibility requirements and has a demonstrated record of program compliance. The Secretary may also consider the institution's performance with regard to financial responsibility, administrative capability, program review findings, audit findings, etc. as outlined in the applicable regulations and in the Federal Student Aid Handbook.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.*

Program Authority: 20 U.S.C. 1094a(a).

Dated: April 5, 2011.

William J. Taggart,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2011–8458 Filed 4–7–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Small, Rural School Achievement Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice announcing application deadline.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.358A.

SUMMARY: Under the Small, Rural School Achievement (SRSA) program, the U.S. Department of Education (Department) awards grants on a formula basis to eligible local educational agencies (LEAs) to address the unique needs of rural school districts. In this notice, we establish the deadline for submission of fiscal year (FY) 2011 SRSA grant applications.

DATES: The deadline for transmittal of electronic applications is June 30, 2011, 4:30:00 p.m. Washington, DC time.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Schulz, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W107, Washington, DC 20202. Telephone: (202) 401–0039 or by e-mail: *reap@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Which LEAs are eligible for an award under the SRSA program?

An LEA (including a public charter school that is considered an LEA under State law) is eligible for an award under the SRSA program if—

(a) The total number of students in average daily attendance at all of the schools served by the LEA is fewer than 600, or each county in which a school served by the LEA is located has a total population density of fewer than 10 persons per square mile; and

(b) All of the schools served by the LEA are designated with a school locale code of 7 or 8 by the Department's National Center for Education Statistics (NCES), or the Secretary has determined, based on a demonstration by the LEA and concurrence of the State educational agency, that the LEA is located in an area defined as rural by a governmental agency of the State.

The school locale codes are the locale codes determined on the basis of the NCES school code methodology in place on the date of enactment of section 6211(b) of the Elementary and Secondary Education Act of 1965, as amended.

Which eligible LEAs must submit an application to receive an FY 2011 SRSA grant award?

An eligible LEA must submit an application to receive an FY 2011 SRSA grant award if that LEA has never submitted an application for SRSA

funds in any prior year. All eligible LEAs that need to submit an application to receive an SRSA grant award in a given year are highlighted in yellow on the SRSA eligibility spreadsheets, which are posted annually on the SRSA program Web site at *http://www2.ed.gov/programs/reapsrsa/eligibility.html.*

Under the regulations in 34 CFR 75.104(a), the Secretary makes grants only to an eligible party that submits an application. Given the limited purpose served by the application under the SRSA program, the Secretary considers the application requirement to be met if an LEA submitted an SRSA application for any prior year. In this circumstance, unless an LEA advises the Secretary by the application deadline that it is withdrawing its application, the Secretary deems the application that an LEA previously submitted to remain in effect for FY 2011 funding, and the LEA does not have to submit an additional application.

We intend to provide, by April 7, 2011, a list of LEAs eligible for FY 2011 funds on the Department's Web site at *http://www.ed.gov/programs/reapsrsa/eligibility.html.* The Web site will indicate which eligible LEAs must submit an electronic application to the Department to receive an FY 2011 SRSA grant award, and which eligible LEAs are considered already to have met the application requirement.

Eligible LEAs that need to submit an application in order to receive FY 2011 SRSA funds must do so electronically by the deadline established in this notice.

Electronic Submission of Applications

An eligible LEA that is required to submit an application to receive FY 2011 SRSA funds must submit an electronic application by June 30, 2011, 4:30:00 p.m., Washington, DC time. If it submits its application after this deadline, the LEA will receive a grant award only to the extent that funds are available after the Department awards grants to other eligible LEAs under the program.

Submission of an electronic application involves the use of the Department's G5 system. You can access the electronic application for the SRSA Program at: *http://www.g5.gov.* When you access this site, you will receive specific instructions regarding the information to include in your application.

The hours of operation of the G5 Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the G5 Web site.

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 7345–7345b.

Dated: April 5, 2011.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2011–8441 Filed 4–7–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CAC–031]

Energy Conservation Program for Certain Industrial Equipment: Publication of the Petition for Waiver From Carrier Corporation and Granting of the Interim Waiver From the Department of Energy Commercial Package Air Conditioner and Heat Pump Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, granting of application for interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes a petition for waiver from Carrier Corporation (Carrier). The petition for waiver (hereafter "petition") requests a waiver from the U.S. Department of Energy (DOE) test procedure applicable to commercial package air-source central air conditioners and heat pumps. The petition is specific to the Carrier variable capacity Super Modular Multi-System SMMSi (commercial) multi-split heat pumps. Through this document, DOE: (1) Solicits comments, data, and information with respect to the Carrier petition; and (2) announces the grant of an interim waiver to Carrier from the existing DOE test procedure for the subject commercial multi-split air conditioners and heat pumps.

DATES: DOE will accept comments, data, and information with respect to the Carrierpetition until, but no later than May 9, 2011.

ADDRESSES: You may submit comments, identified by case number "CAC–031," by any of the following methods:

- *Federal eRulemaking Portal:http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: AS_Waiver_Requests@ee.doe.gov.* Include the case number [CAC–031] in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J/1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., (Resource Room of the Building Technologies Program), Washington, DC, 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except on Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE rulemakings and waivers regarding similar central air conditioning and heat pump equipment. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal

Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611. E-mail: *AS_Waiver_Requests@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. E-mail: *mailto:Elizabeth.Kohl@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency, including Part B of Title III, which establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles." (42 U.S.C. 6291–6309) Part C of Title III provides for a similar energy efficiency program titled "Certain Industrial Equipment," which includes commercial air conditioning equipment, package boilers, water heaters, and other types of commercial equipment.[1] (42 U.S.C. 6311–6317)

Today's notice involves commercial equipment under Part C. Part C specifically includes definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316). With respect to test procedures, Part C authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

For commercial package air-conditioning and heating equipment, EPCA provides that "the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute [ARI] or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers [ASHRAE], as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992." (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), the statute further directs the Secretary to amend the test procedure for a covered commercial product if the industry test procedure is amended, unless the Secretary determines, by rule and based on clear and convincing evidence, that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3).

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air-conditioning and heating equipment, effective January 8, 2007. 71 FR 71340. Table 1 to Title 10 of the Code of Federal Regulations (10 CFR) 431.96 directs manufacturers of commercial package air conditioning and heating equipment to use the appropriate procedure when measuring energy efficiency of those products. The cooling capacities of Carrier's commercial SMMSi multi-split heat pump products at issue in the waiver petition filed by Carrier range from 72,000 Btu/h to 220,000 Btu/h. All of these products are covered by ARI Standard 340/360–2004, which includes products with capacities greater than 65,000 Btu/hour.

DOE's regulations for covered products permit a person to seek a waiver from the test procedure requirements for covered commercial equipment if at least one of the following conditions is met: (1) The petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures; or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect pursuant to the provisions of 10 CFR 431.401(g).

The waiver process also permits parties submitting a petition for waiver to file an application for interim waiver of the applicable test procedure requirements. 10 CFR 431.401(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 431.401(e)(3). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever occurs first. It may be extended by DOE for an additional 180 days. 10 CFR 431.401(e)(4).

II. Petition for Waiver

On February 16, 2011, Carrier filed a petition for waiver from the test procedures at 10 CFR 431.96 applicable to commercial package air source central air conditioners and heat pumps, as well as an application for interim waiver. The capacities of the Carrier SMMSi multi-split heat pumps range from 72,000Btu/hto 220,000Btu/h. The applicable test procedure for the air-source heat pumps is ARI 340/360–2004. Manufacturers are directed to use these test procedures pursuant to Table 1 of 10 CFR 431.96.

Carrier seeks a waiver from the applicable test procedures under 10 CFR 431.96 on the grounds that its SMMSi multi-split heat pumps contain design characteristics that prevent testing according to the current DOE test procedures. Specifically, Carrier asserts that the two primary factors that prevent testing of its SMMSi multi-split variable speed products are the same factors stated in the waivers that DOE granted to Mitsubishi Electric & Electronics USA, Inc. (Mitsubishi) and other manufacturers for similar lines of commercial multi-split air-conditioning systems:

- Testing laboratories cannot test products with so many indoor units; and
- There are too many possible combinations of indoor and outdoor units to test.

Mitsubishi (69 FR 52660, August 27, 2004); Mitsubishi (72 FR 17528, April 9, 2007); Samsung (72 FR 71387, Dec. 17, 2007); Fujitsu (72 FR 71383, Dec. 17, 2007); Daikin (73 FR 39680, July 10, 2008); Daikin (74 FR 15955, April 8, 2009); Daikin (74 FR 16193, April 9, 2009); Daikin (74 FR 16373, April 10, 2009); Mitsubishi (74 FR 66311, 66315, December 15, 2009) and LG (74 FR 66330, December 15, 2009).

The SMMSi systems have operational characteristics similar to the commercial multi-split products manufactured by Mitsubishi, Samsung, Fujitsu and Daikin. As indicated above, DOE has already granted waivers for these products. The SMMSi system consists of

[1] applicable to its Super Modular Multi-System ("SMMSi") commercial Variable Refrigerant Flow ("VRF") multi-split systems. Carrier requests this waiver for the SMMSi systems because the basic design of VRF multi-split systems prevents testing or rating according to DOE's prescribed test procedures. Carrier also hereby requests an interim waiver for the same products pursuant to 10 CFR 431.401(a)(2).

multiple indoor units connected to an air-cooled outdoor unit. The indoor units for these products are available in a number of potential configurations, including the following: 4-way cassette, compact 4-way cassette, high-wall, slim ducted, medium static ducted, high static ducted, and ceiling. There are 7 unique outdoor models and 43 unique indoor models. A single outdoor model can be connected to up to 38 indoor units. According to Carrier, the various indoor and outdoor models can be connected in a multitude of configurations, with many thousands of possible combinations. Consequently, Carrier requested that DOE grant a waiver from the applicable test procedures for its SMMSi product designs until a suitable test method can be prescribed.

III. Application for Interim Waiver

On February 16, 2011, Carrier also submitted an application for an interim waiver from the test procedures at 10 CFR 431.96 for its SMMSi equipment. DOE determined that Carrier's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship Carrier might experience absent a favorable determination on its application for an interim waiver. DOE understands, however, that if it did not issue an interim waiver, Carrier's products would not be tested and rated for energy consumption in the same manner as equivalent products for which DOE previously granted waivers. Furthermore, DOE has determined that it appears likely that Carrier's petition for waiver will be granted and that is desirable for public policy reasons to grant Carrier immediate relief pending a determination on the petition for waiver. DOE believes that it is likely Carrier's petition for waiver for the new SMMSi multi-split models will be granted because, as noted above, DOE has previously granted a number of waivers for similar product designs.[2] The two principal reasons supporting the grant of the previous waivers also apply to Carrier's SMMSi products: (1) Test laboratories cannot test products with so many indoor units; and (2) it is impractical to test so many combinations of indoor units with each outdoor unit. In addition, DOE believes that similar products should be tested and rated for energy consumption on a comparable basis. For these same reasons, DOE also determined that it is desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver.

Therefore, *it is ordered that:*

The application for interim waiver filed by Carrier is hereby granted for Carrier's SMMSi multi-split heat pumps, subject to the specifications and conditions below.

1. Carrier shall not be required to test or rate its SMMSi commercial multi-split products on the basis of the existing test procedures under 10 CFR 431.96, which incorporates by reference ARI 340/360–2004.

2. Carrier shall be required to test and rate its SMMSi commercial multi-split products according to the alternate test procedure as set forth in section IV(3), "Alternate test procedure."

The interim waiver applies to the following basic model groups:

Standard model outdoor units:

MMY–MAP0724HT9UL, with a capacity of 72,000 Btu/hr
MMY–MAP0964HT9UL, with a capacity of 96,000 Btu/hr
MMY–MAP1144HT9UL, with a capacity of 114,000 Btu/hr
MMY–AP1444HT9UL, with a capacity of 144,000 Btu/hr
MMY–AP1684HT9UL, with a capacity of 168,000 Btu/hr
MMY–AP1924HT9UL, with a capacity of 192,000 Btu/hr
MMY–AP2284HT9UL, with a capacity of 220,000 Btu/hr

Indoor units, whose capacities range from 7,000 to 48,000 Btu/hr that are compatible with the outdoor units listed above:

4-way cassette
MMU–AP0182H2UL, MMU–AP0212H2UL, MMU–AP0242H2UL, MMU–AP0302H2UL, MMU–AP0362H2UL, and MMU–AP0422H2UL
Compact 4-way cassette
MMU–AP0071MH2UL, MMU–AP0091MH2UL, MMU–AP0121MH2UL, MMU–AP0151MH2UL, and MMU–AP0181MH2UL
Ceiling
MMC–AP0181H2UL, MMC–AP0241H2UL, MMC–AP0361H2UL, and MMC–AP0421H2UL
High-wall
MMK–AP0073H2UL, MMK–AP0093H2UL, MMK–AP0123H2UL, MMK–AP0153H2UL, MMK–AP0183H2UL, and MMK–AP0243H2UL
Slim ducted
MMD–AP0071SPH2UL, MMD–AP0091SPH2UL, MMD–AP0121SPH2UL, MMD–AP0151SPH2UL, and MMD–AP0181SPH2UL
Medium static ducted
MMD–AP0071BH2UL, MMD–AP0091BH2UL, MMD–AP0121BH2UL, MMD–AP0151BH2UL, MMD–AP0181BH2UL, MMD–AP0211BH2UL, MMD–AP0241BH2UL, MMD–AP0301BH2UL, MMD–AP0361BH2UL, MMD–AP0421BH2UL, and MMD–AP0481BH2UL
High static ducted
MMD–AP0151H2UL, MMD–AP0181H2UL, MMD–AP0241H2UL, MMD–AP0301H2UL, MMD–AP0361H2UL, and MMD–AP0481H2UL

This interim waiver is issued on the condition that the statements, representations, and documents provided by the petitioner are valid. DOE may revoke or modify this interim waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. Carrier may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional models of commercial package air conditioners and heat pumps for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that grant of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR Part 431, Subpart T.

IV. Alternate Test Procedure

In responses to two petitions for waiver from Mitsubishi, DOE specified an alternate test procedure to provide a basis from which Mitsubishi could test and make valid energy efficiency representations for its R410A CITY MULTI products, as well as for its R22 multi-split products. Alternate test procedures related to the Mitsubishi petitions were published in the **Federal Register** on April 9, 2007. See 72 FR 17528 and 72 FR 17533. For reasons similar to those published in these prior notices, DOE believes that an alternate test procedure is appropriate in this instance.

DOE understands that existing testing facilities have limited ability to test multiple indoor units simultaneously. This limitation makes it impractical for manufacturers to test the large number of possible combinations of indoor and outdoor units for some variable refrigerant flow zoned systems. We further note that after DOE granted a waiver for Mitsubishi's R22 multi-split

[2] DOE notes that it has also previously granted interim waivers to Fujitsu (70 FR 5980 (Feb. 4, 2005)), Samsung (70 FR 9629 (Feb. 28, 2005)), Mitsubishi (72 FR 17533 (April 9, 2007)), and Daikin (72 FR 35986 (July 2, 2007)), for comparable commercial multi-split air conditioners and heat pumps.

products, ARI formed a committee to discuss testing issues and to develop a testing protocol for variable refrigerant flow systems. The committee has developed a test procedure which has been adopted by AHRI—"ANSI/AHRI 1230—2010: Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment" and incorporated into ASHRAE 90.1—2010. The commercial multisplit waivers that DOE has granted to Mitsubishi and several other manufacturers and the alternate test procedure set forth in those waivers are consistent with ANSI/AHRI 1230–2010. The waivers use a definition of "tested combination" that is substantially the same as the definition in ANSI/AHRI 1230–2010. As a result, DOE is considering prescribing ANSI/AHRI 1230–2010 in the subsequent decision and order as the alternate test procedure for this Carrier waiver. For the interim waiver, however, DOE will continue to require the use of the alternate test procedure prescribed in the past multi-split waivers.

Therefore, as a condition for granting this interim waiver to Carrier, DOE is including an alternate test procedure similar to those granted to Mitsubishi for its R22 and R410A products. This alternate test procedure will allow Carrier to test and make energy efficiency representations for its SMMSi products. DOE has applied a similar alternate test procedure to other waivers for similar residential and commercial central air conditioners and heat pumps manufactured by Mitsubishi (72 FR 17528, April 9, 2007); Samsung (72 FR 71387, Dec. 17, 2007); Fujitsu (72 FR 71383, Dec. 17, 2007); Daikin (73 FR 39680, July 10, 2008); Daikin (74 FR 15955, April 8, 2009); Daikin (74 FR 16193, April 9, 2009); Daikin (74 FR 16373, April 10, 2009); Mitsubishi (74 FR 66311, 66315, December 15, 2009) and LG (74 FR 66330, December 15, 2009).

The alternate test procedure developed in conjunction with the Mitsubishi waiver permits Carrier to designate a "tested combination" for each model of outdoor unit. The indoor units designated as part of the tested combination must meet specific requirements. For example, the tested combination must have from two to eight indoor units so that it can be tested in available test facilities. (The "tested combination" was originally defined to consist of one outdoor unit matched with between 2 and 5 indoor units. The maximum number of indoor units in a tested combination is increased in this instance from 5 to 8 to account for the fact that these larger-capacity products can accommodate a greater number of indoor units.) The tested combination must be tested according to the applicable DOE test procedure, as modified by the provisions of the alternate test procedure as set forth below. The alternate test procedure also allows manufacturers of such products to make valid and consistent representations of energy efficiency for their air-conditioning and heat pump products.

DOE is including the following waiver language in the interim waiver for Carrier's SMMSi commercial multi-split water-source heat pump models:

(1) The petition for waiver filed by Carrier Corporation is hereby granted as set forth in the paragraphs below.

(2) Carrier shall not be required to use existing test procedures to test or rate its SMMSi variable capacity multi-split heat pump products listed above, but shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3).

(3) *Alternate test procedure.*

(A) Carrier shall be required to test the products listed in above according to the test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR 431.96, except that Carrier shall test a tested combination selected in accordance with the provisions of subparagraph (B) of this paragraph. For every other system combination using the same outdoor unit as the tested combination, Carrier shall make representations concerning the SMMSi products covered in this waiver according to the provisions of subparagraph (C) below.

(B) Tested combination. The term tested combination means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features:

(1) The basic model of a variable refrigerant flow system used as a tested combination shall consist of one outdoor unit, with one or more compressors, that is matched with between two and five indoor units. (For systems with nominal cooling capacities greater than 150,000 Btu/h, as many as eight indoor units may be used, to enable testing of non-ducted indoor unit combinations). For multi-split systems, each of these indoor units shall be designed for individual operation.

(2) The indoor units shall—

(i) Represent the highest sales model family or another indoor model family if the highest sales model family does not provide sufficient capacity (see ii);

(ii) Together, have a nominal cooling capacity that is between 95% and 105% of the nominal cooling capacity of the outdoor unit;

(iii) Not, individually, have a nominal cooling capacity that is greater than 50% of the nominal cooling capacity of the outdoor unit;

(iv) Operate at fan speeds that are consistent with the manufacturer's specifications; and

(v) Be subject to the same minimum external static pressure requirement while being configurable to produce the same static pressure at the exit of each outlet plenum when manifolded as per § 2.4.1 of 10 CFR part 430, subpart B, appendix M.

(C) *Representations.* In making representations about the energy efficiency of its SMMSi variable capacity multi-split heat pump products for compliance, marketing, or other purposes, Carrier must fairly disclose the results of testing under the DOE test procedurein a manner consistent with the provisions outlined below:

(1) For SMMSi combinations tested in accordance with this alternate test procedure, Carrier may make representations based on these test results.

(2) For SMMSi combinations that are not tested, Carrier may make representations of non-tested combinations at the same energy efficiency level as the tested combination. The outdoor unit must be the one used in the tested combination. The representations must be based on the test results for the tested combination. The representations may also be determined by an Alternative Rating Method approved by DOE.

V. Summary and Request for Comments

Through today's notice, DOE announces receipt of the Carrier petition for waiver from the test procedures applicable to Carrier's SMMSi commercial multi-split heat pump products. For the reasons articulated above, DOE also grants Carrier an interim waiver from those procedures. As part of this notice, DOE is publishing Carrier's petition for waiver in its entirety. The petition contains no confidential information. Furthermore, today's notice includes an alternate test procedure that Carrier is required to follow as a condition of its interim waiver. In this alternate test procedure, DOE is defining a tested combination that Carrier could use in lieu of testing all retail combinations of its SMMSi multi-split heat pump products.

DOE is interested in receiving comments on the issues addressed in this notice. Pursuant to 10 CFR

431.401(d), any person submitting written comments must also send a copy of such comments to the petitioner, pursuant to 10 CFR 431.401(d). The contact information for the petitioner is: Dr. John Galbraith, VP of RCS Engineering, Carrier Corporation, 7310 West Morris Street, Indianapolis, IN 46231. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC, on March 30, 2011.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

February 16, 2011.

Ms. Catherine Zoi, Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

Re: Petition for Waiver and Application for Interim Waiver From Department of Energy Commercial Package Air Conditioner and Heat Pump Test Procedures

Dear Assistant Secretary Zoi:

Pursuant to 10 CFR 431.401(a), Carrier Corporation ("Carrier") respectfully petitions the Department of Energy ("DOE") for a waiver of the test procedure set forth at 10 CFR 431.96, *i.e.,* ARI Standard 340/360–2004,[1] applicable to its Super Modular Multi-system ("SMMSi") commercial Variable Refrigerant Flow ("VRF") multi-split systems. Carrier requests this waiver for the SMMSi systems because the basic design of VRF multi-split systems prevents testing or rating according to DOE's prescribed test procedures. Carrier also hereby requests an interim waiver for the same products pursuant to 10 CFR 431.401(a)(2).

Background

Carrier is a wholly-owned subsidiary of United Technologies Corporation. Carrier provides heating, ventilation, air-conditioning and refrigeration (HVACR) systems, controls, services, and sustainable building solutions for residential, commercial, industrial, food service, and transportation applications. Carrier would like to initiate the marketing and sale of the SMMSi systems as early as March 2011. Carrier will import the systems from two of its joint ventures: Toshiba Carrier Corporation (Japan) and Toshiba Carrier Thailand Co. Ltd.

Carrier's SMMSi VRF multi-split products contain design characteristics that prevent testing of the system using the procedures incorporated by reference at 10 CFR 431.96, ARI Standard 340/360–2004. This standard does not provide a feasible method of testing and rating a system that: (i) Utilizes multiple indoor and outdoor units; and (ii) allows for the mixing of different types and capacities of indoor units within the same system. Carrier's products that are the subject of this petition and application involve 7 unique outdoor models[2] and 43 unique indoor models. A single outdoor model can be connected to up to 38 indoor units. Moreover, the various indoor and outdoor models can be connected in a multitude of configurations. Simply put, there are many thousands of possible combinations.

A waiver and interim waiver for Carrier's SMMSi systems are warranted for reasons cited previously in other applications for waiver for similar commercial multi-split air conditioning systems. The two key reasons are, first, that testing laboratories are unable to test products with so many indoor units (up to 38) connected to an outdoor system. Second, there are too many possible combinations of indoor and outdoor units to be feasibly tested. In addition, DOE has granted waivers to numerous other comparable commercial, multi-split VRF systems, including Mitsubishi Electric & Electronics USA, 72 FR 17528 (Apr. 9, 2007); Samsung, 72 FR 71387 (Dec. 17, 2007); Fujitsu, 72 FR 71383 (Dec. 17, 2007); SANYO North America Corp., 75 FR 41845 (July 19, 2010); LG Electronics U.S.A., Inc., 74 FR 66330 (Dec. 15, 2009); and Daikin AC (Americas), 74 FR 16373 (Apr. 10, 2009).

Basic Models for Which a Waiver Is Requested

Carrier seeks a waiver from the test procedures in 10 CFR 431.96 for the following basic models:

Standard model outdoor units:

MMY–MAP0724HT9UL, with a capacity of 72,000 Btu/hr
MMY–MAP0964HT9UL, with a capacity of 96,000 Btu/hr
MMY–MAP1144HT9UL, with a capacity of 114,000 Btu/hr
MMY–AP1444HT9UL, with a capacity of 144,000 Btu/hr
MMY–AP1684HT9UL, with a capacity of 168,000 Btu/hr
MMY–AP1924HT9UL, with a capacity of 192,000 Btu/hr
MMY–AP2284HT9UL, with a capacity of 220,000 Btu/hr

All outdoor units identified above are compatible for use with the below listed indoor units, whose capacities range from 7,000 to 48,000 Btu/hr:

4-way cassette
MMU–AP0182H2UL, MMU–AP0212H2UL, MMU–AP0242H2UL, MMU–AP0302H2UL, MMU–AP0362H2UL, and MMU–AP0422H2UL

Compact 4-way cassette
MMU–AP0071MH2UL, MMU–AP0091MH2UL, MMU–AP0121MH2UL, MMU–AP0151MH2UL, and MMU–AP0181MH2UL

Ceiling
MMC–AP0181H2UL, MMC–AP0241H2UL, MMC–AP0361H2UL, and MMC–AP0421H2UL

High-wall
MMK–AP0073H2UL, MMK–AP0093H2UL, MMK–AP0123H2UL, MMK–AP0153H2UL, MMK–AP0183H2UL, and MMK–AP0243H2UL

Slim ducted
MMD–AP0071SPH2UL, MMD–AP0091SPH2UL, MMD–AP0121SPH2UL, MMD–AP0151SPH2UL, and MMD–AP0181SPH2UL

Medium static ducted
MMD–AP0071BH2UL, MMD–AP0091BH2UL, MMD–AP0121BH2UL, MMD–AP0151BH2UL, MMD–AP0181BH2UL, MMD–AP0211BH2UL, MMD–AP0241BH2UL, MMD–AP0301BH2UL, MMD–AP0361BH2UL, MMD–AP0421BH2UL, and MMD–AP0481BH2UL

High static ducted

[1] As of the date of this petition and application, the current version of 10 *CFR* 431.96 (2010) incorporates by reference ARI Standard 340/360–2004. In the event that DOE incorporates by reference a more recent iteration of ARI Standard 340/360 in 2011 version of 10 *CFR* 431.96, Carrier hereby requests a waiver from those test procedures as well.

[2] The 7 outdoor models include 6-ton, 8-ton, and 9.5-ton units, as well as combinations of these units that result in 12-ton, 14-ton, 16-ton, and 19-ton units. The model numbers and capacities for these 7 units are provided in Section II.

MMD–AP0151H2UL, MMD–AP0181H2UL, MMD–AP0241H2UL, MMD–AP0301H2UL, MMD–AP0361H2UL, and MMD–AP0481H2UL

SMMSi System Characteristics Constituting the Grounds for Carrier's Petition

Carrier's SMMSi VRF multi-split products allow for the connection of multiple indoor units to an outdoor system comprised of one or two outdoor units. These units contain highly efficient twin-rotary compressors and advanced vector-controlled inverters to allow for greater operating performance when operating under a constant load. This improves both energy efficiency and comfort levels. In addition, the products' infinite variable control adjusts compressor rotation speed in 0.1 Hz steps, which further helps to minimize energy loss when changing frequencies and also creates a comfortable environment subject to minimal temperature variations.

Carrier's newly developed VRF control ensures the right amount of cooling or heating to satisfy the unique demands of each room, regardless of the type of indoor unit used or the length of the pipes. Moreover, system layouts can use a maximum equivalent distance of up to 985 feet, and Carrier's products can support height differences of up to 130 feet between indoor units within a single system.

VRF multi-split technology will help the United States reduce the amount of energy required to heat and cool buildings. Carrier looks forward to introducing its SMMSi products to improve the control and comfort of end users and to help decrease the nation's overall energy usage.

As indicated above, DOE has previously granted waivers and interim waivers to other manufacturers of similar VRF multi-split equipment that share the same basic system characteristics as that of Carrier's SMMSi products. *See, e.g.,* 75 FR 41845 (July 19, 2010) (order granting Sanyo's petition for waiver); 74 FR 66330 (Dec. 15, 2009) (order granting LG's petition for waiver); 74 FR 16373 (Apr. 10, 2009) (order granting Daikin's petition for waiver); 72 FR 71387 (Dec. 17, 2007) (order granting Samsung's petition for waiver); 72 FR 71383 (Dec. 17, 2007) (order granting Fujitsu's petition for waiver); 72 FR 17528 (Apr. 9, 2007) (order granting Mitsubishi's petition for waiver); *see also* 75 FR 13114) (Mar. 18, 2010) (granting Sanyo's application for interim waiver); 74 FR 66324 (Dec. 15, 2009) (granting Daikin's application for interim waiver); 74 FR 20688 (May 5, 2009) (granting LG's application for interim waiver); 71 FR 14858 (Mar. 24, 2006) (granting Mitsubishi's application for interim waiver).

Specific Testing Requirements Sought To Be Waived

Carrier's petition seeks a waiver from the applicable test procedures set forth at 10 CFR 431.96. Specifically, Carrier petitions for waiver from the test conditions and procedures of ARI Standard 340/360–2004 for its SMMSi products with nominal capacity greater than or equal to 65,000 BTU/hr, but less than 760,000 BTU/hr.

Identity of Manufacturers of Similar Basic Models

To the best of Carrier's knowledge, the following manufacturers currently market similar VRF products within the United States:

Daikin AC (Americas), Inc.
Fujitsu General America, Inc.
LG Electronics U.S.A., Inc.
Mitsubishi Electric & Electronics USA, Inc.
SANYO North America Corp.

Alternate Testing Procedures

Carrier requests that DOE approve as an alternate test procedure the procedures outlined in the current AHRI Standard 1230, *Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment Standard.* These procedures are substantially similar to those that DOE has applied in the VRF waivers granted to date, with changes intended to make the efficiency ratings based on the standard more comparable to other types of equipment that could be used in place of VRF systems. This requested alternate testing procedure is appropriate for several reasons. First, AHRI plans to launch a VRF certification program based on AHRI Standard 1230. Second, ASHRAE has specified AHRI Standard 1230 as the test standard for VRF systems in ASHRAE Standard 90.1–2010, which establishes efficiency requirements for VRF systems. Notably, in a previous waiver proceeding (75 FR 25,224, 25,226 (May 7, 2010)) Carrier commented that DOE should require similar products to be tested per AHRI 1230. DOE responded that AHRI 1230 had not yet been adopted by ASHRAE. This is no longer the case.

Adopting Standard 1230 as an alternate test procedure would eliminate the need for Carrier to test the SMMSi system using two different testing protocols. If DOE applies something other than Standard 1230, Carrier would have to test its systems using: (i) AHRI Standard 1230 to receive AHRI certification and to show compliance with the efficiency levels in ASHRAE 90.1; and (ii) whatever alternate test procedure that DOE requires as a condition of granting this waiver request. Third, given the requirements for varying interconnecting tube lengths with system capacity, the latest edition of Standard 1230 provides a more accurate comparison of the energy efficiency ratings of VRF products and non-VRF alternative systems than do the alternate procedures that DOE has previously applied in other waiver approvals.

Application for Interim Waiver

Pursuant to 10 CFR 431.401(a)(2), Carrier also submits an Application for Interim Wavier of 10 CFR 431.96 and ARI Standard 340/360–2004 for the SMMSi VRF multi-split models listed in Section II above. Carrier's application should be granted for the following reasons.

First, Carrier is likely to succeed on its Petition for Wavier because there is no reasonable argument that ARI Standard 340/360–2004 can be applied to its SMMSi product class. Existing testing facilities are not designed to test multi-split VRF systems with so many indoor and outdoor units and possible combinations. Indeed, as explained above, DOE has granted similar petitions for waiver and applications for interim waiver from several companies based on the same rationale offered by Carrier in this Petition and Application. Those prior approvals confirm that the test procedures incorporated by reference into 10 CFR 431.96 do not adequately define uniform testing and rating methods for VRF multi-split products.

Second, Carrier is likely to suffer economic hardship and a competitive disadvantage if DOE does not grant its application for interim waiver. Other manufacturers of similar products have already received waivers and are able to market and distribute their VRF multi-split products. Without an interim waiver, Carrier will be unable to introduce its SMMSi product line in the United States in March 2011 as currently planned. A significant portion of Carrier's projected revenues depends on the timely introduction of this product line into the United States market. In the event that Carrier must await completion of DOE's waiver process, its revenues and market share will be negatively affected.

Finally, Carrier's application for interim waiver is supported by sound public policy reasons, as DOE recently recognized in granting a similar application: "[I]n those instances where

the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for similar products design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis." 73 FR at 1215. Moreover, Carrier's SMMSi products will increase system efficiency, reduce national energy usage, and benefit end users in the United States.

Confidential Information

Carrier makes no request to DOE regarding the confidential treatment of any information contained in this Petition for Waiver and Application for Interim Waiver.

Conclusion

Carrier respectfully requests that DOE grant a waiver and interim waiver from existing test procedures applicable to Carrier's SMMSi VRF multi-split systems and to apply the alternate testing procedures described above until such time as a representative test procedure is developed and adopted for such products. Otherwise, Carrier will not be able to compete effectively in the United States VRF market.

Given that Carrier would like to introduce its SMMSi product line in March 2011 and that DOE's regulations contemplate a decision on Carrier's Application for Interim Waiver within 15 business days, 10 CFR 431.401(e), Carrier would greatly appreciate a timely response to this letter request. To that end, we would be happy promptly to answer any questions that you might have and to provide you with any needed additional information.

Carrier certifies that all manufacturers listed above in Section V of this request have been notified by letter of this petition and application.

Sincerely,

Carrier Corporation,

Dr. John Galbraith,

VP for RCS Engineering.

[FR Doc. 2011–8401 Filed 4–7–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5679–031]

Toutant Hydropower Inc.; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Types of Application:* Amendment of License.

b. *Project No.:* 5679–031.

c. *Date Filed:* October 12, 2010.

d. *Applicant:* Toutant Hydropower Inc.

e. *Name of Project:* M.S.C. (Toutant) Hydroelectric Project.

f. *Location:* The project is located on the Quinebaugh River, in Windham County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Roland Toutant, Toutant Hydropower, Inc., 80 Bungay Hill Road, Woodstock, CT 06281, (860) 974–2099.

i. *FERC Contact:* Mr. Jeremy Jessup, (202) 502–6779, *Jeremy.Jessup@ferc.gov*.

j. Deadline for filing comments, motions to intervene, and protests, is 30 days from the issuance date of this notice. All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–5679–031) on any comments, motions, or recommendations filed.

k. *Description of Request:* The applicant proposes to amend the license to reflect one refurbished and re-installed small "fire pump" turbine direct coupled to a 120 kilowatt, 2300 volt, AC synchronous vertically mounted generator. The "fire pump" turbine is located in the southwest corner of the existing turbine pit. The "fire pump" turbine has a rated maximum hydraulic capacity of 106 cubic feet per second. All of the work to refurbish and re-install the turbine and install the generator occurred within the existing hydropower faculty.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) Bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document

on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: April 4, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–8391 Filed 4–7–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–2256–000]

California Independent System Operator Corporation; Notice of Technical Conference

By order dated March 17, 2011, in Docket No. ER11–2256–000, the Federal Energy Regulatory Commission (Commission) directed staff to convene a technical conference regarding California Independent System Operator Corporation's (CAISO) Capacity Procurement Mechanism (CPM) and exceptional dispatch mitigation provisions.[1] Take notice that such conference will be held on April 28, 2011 at the Commission's headquarters at 888 First Street, NE., Washington, DC 20426, beginning at 9 a.m. (EDT) in the Commission Meeting Room (Room 2C). The technical conference will be led by Commission staff.

The purpose of the technical conference is to discuss the issues raised by CAISO's proposed CPM compensation methodology and continuation of the existing exceptional dispatch market power mitigation provisions. A subsequent notice detailing the topics to be discussed will be issued in advance of the conference.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY); or send a fax to 202–208–2106 with the required accommodations.

All parties are permitted to attend. For more information on this conference, please contact Katheryn Hoke at *katheryn.hoke@ferc.gov* or (202) 502–8404, or Colleen Farrell at *colleen.farrell@ferc.gov* or (202) 502–6751.

Dated: April 1, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–8392 Filed 4–7–11; 8:45 am]

BILLING CODE 6717–01–P

[1] *Cal. Indep. Trans. Sys. Op. Corp.,* 134 FERC ¶ 61,211, at P 2 (2011).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM09–2–001]

Contract Reporting Requirements of Intrastate Natural Gas Companies; Notice of the Agenda for Form No. 549D; Technical Workshop

As noticed on March 22, 2011, in this docket the technical workshop on Form No. 549D required by Order No. 735–A will be scheduled for April 12, 2011. The present notice provides the Agenda for this technical workshop.

Those not able to attend in person may listen live to the workshop through a telephone bridge connection. Since a one-hour lunch break has been allocated during this workshop, interested people will need to hang up upon the announcement by the Moderator of the lunch break. If interested in the "Additional Question and Answer Period" scheduled for after lunch, callers need to call back in for that portion of the meeting.

The call-in information for the 9 a.m. to 12:15 p.m. portion of the workshop is:

- From within the DC area: 202–502–6888
- From outside the DC area: 1–877–857–1347
- Meeting ID Number: 2685

Callers may dial in 15 minutes before the start of the morning and afternoon sessions.

The after-lunch portion of the workshop is expected to run from 1:15 p.m. to 2 p.m., but may deviate depending upon the needs of the attendees. The call information for the after-lunch portion of the workshop is:

- From within the DC area: 202–502–6888
- From outside the DC area: 1–877–857–1347
- Meeting ID Number: 4734

For additional information, please contact James Sarikas at 202–502–6831 or *James.Sarikas@ferc.gov* of FERC's Office of Energy Market Regulation and Thomas Russo at 202–502–8792 or *Thomas.Russo@ferc.gov* of FERC's Office of Enforcement.

Dated: April 4, 2011.

Kimberly D. Bose,

Secretary.

Attachment: Workshop Agenda.

The Agenda for Form No. 549D Technical Workshop on April 12, 2011; Commission Meeting Room

9 a.m.–9:10 a.m. Opening Remarks

9:10 a.m.–9:30 a.m. Overview of Form No. 549D filing and Public Release of Data

9:30 a.m.–9:45 a.m. Completing and eFiling fillable Form No. 549D

9:45 a.m.–10:15 a.m. Questions and Answers Period on fillable Form No. 549D

10:15 a.m.–10:30 a.m. Break

10:30 a.m.–11:15 a.m. Using XML, Validation of Data and eFiling

11:15 a.m.–12:15 p.m. Questions and Answer Period on using XML

12:15 p.m.–1:15 p.m. Lunch

1:15 p.m.–1:45 p.m. Additional Question and Answer Period

1:45 p.m.–2 p.m. Closing Remarks

Note: All times are approximate. The workshop may end earlier depending on the number of questions from the attendees.

[FR Doc. 2011–8393 Filed 4–7–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9291–8]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. Seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or e-mail at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 1564.08; NSPS for Small Industrial-Commercial-Institutional Steam Generating Units; 40 CFR part 60, subparts A and Dc; was approved on 03/02/2011; OMB Number 2060–0202; expires on 03/31/2014; Approved without change.

EPA ICR Number 1078.09; NSPS for Phosphate Rock Plants; 40 CFR part 60, subparts A and NN; was approved on 03/02/2011; OMB Number 2060–0111; expires on 03/31/2014; Approved without change.

EPA ICR Number 1053.10; NSPS for Electric Utility Steam Generating Units; 40 CFR part 60, subparts A and Da; was approved on 03/02/2011; OMB Number 2060–0023; expires on 03/31/2014; Approved without change.

EPA ICR Number 1158.10; NSPS for Rubber Tire Manufacturing; 40 CFR part 60, subparts A and BBB; was approved on 03/02/2011; OMB Number 2060–0156; expires on 03/31/2014; Approved without change.

EPA ICR Number 1086.09; NSPS for Onshore Natural Gas Processing Plants; 40 CFR part 60, subparts A, KKK and LLL, was approved on 03/02/2011; OMB Number 2060–0120; expires on 03/31/2014; Approved without change.

EPA ICR Number 1587.11; State Operating Permit Regulations; 40 CFR part 70; was approved on 03/02/2011; OMB Number 2060–0243; expires on 04/30/2012; Approved without change.

EPA ICR Number 1812.04; Annual Public Water Systems Compliance Report (Reinstatement); was approved on 03/03/2011; OMB Number 2020–0020; expires on 03/31/2014; Approved with change.

EPA ICR Number 1808.06; Environmental Impact Assessment of Nongovernmental Activities in Antarctica (Renewal); 40 CFR part 8; was approved on 03/04/2011; OMB Number 2020–0007; expires on 03/31/2014; Approved without change.

EPA ICR Number 0193.10; NESHAP for Beryllium; 40 CFR part 61, subparts A and C; was approved on 03/07/2011; OMB Number 2060–0092; expires on 03/31/2014; Approved without change.

EPA ICR Number 2072.04; NESHAP for Lime Manufacturing; 40 CFR part 63, subparts A and AAAAA; was approved on 03/09/2011; OMB Number 2060–0544; expires on 03/31/2014; Approved with change.

EPA ICR Number 1049.12; Notification of Episodic Releases of Oil and Hazardous Substances (Renewal); 40 CFR parts 110, 117 and 302, was approved on 03/09/2011; OMB Number 2050–0046; expires on 03/31/2014; Approved without change.

EPA ICR Number 1249.09; Requirements for Certified Applicators Using 1080 Collars for Livestock Protection; was approved on 03/09/2011; OMB Number 2070–0074; expires on 03/31/2014; Approved without change.

EPA ICR Number 2364.03; Alternative Affirmative Defense Requirements for Ultra-low Sulfur Diesel (Renewal); 40 CFR 80.613; was approved on 03/14/2011; OMB Number 2060–0639; expires on 03/31/2014; Approved without change.

EPA ICR Number 2411.01; NSPS and NESHAP for Petroleum Refineries Sector Residual Risk and Technology Review (New Collection); was approved on 03/28/2011; OMB Number 2060–0657; expires on 03/31/2014; Approved with change.

EPA ICR Number 0657.10; NSPS for Graphic Arts Industry; 40 CFR part 60, subparts A and QQ; was approved on 03/29/2011; OMB Number 2060–0105; expires on 03/31/2014; Approved with change.

EPA ICR Number 1063.11; NSPS for Sewage Sludge Treatment Plants; 40 CFR part 60, subparts A and O; was approved on 03/29/2011; OMB Number 2060–0035; expires on 03/31/2014; Approved with change.

EPA ICR Number 1442.21; Land Disposal Restrictions (Renewal); 40 CFR part 268; was approved on 03/29/2011; OMB Number 2050–0085; expires on 03/31/2014; Approved without change.

EPA ICR Number 0783.58; Motor Vehicle Emissions and Fuel Economy Compliance: Light Duty Vehicles, Light Duty Trucks, and Highway Motorcycles (Change Worksheet); 40 CFR parts 85 and 86; 40 CFR 85.1901–85.1908; 40 CFR 86.1845–86.1848; 40 CFR part 600, subparts E and F; was approved on 03/29/2011; OMB Number 2060–0104; expires on 08/31/2012; Approved without change.

Comment Filed

EPA ICR Number 0940.23; Ambient Air Quality Surveillance (Proposal for CO NAAQS); in 40 CFR part 58; OMB filed comment on 03/02/2011.

EPA ICR Number 1716.07; NESHAP for Wood Furniture Manufacturing Operations; in 40 CFR part 63, subparts A and JJ; OMB filed comment on 03/07/2011.

Dated: April 4, 2011.

John Moses,

Director, Collections Strategies Division.

[FR Doc. 2011–8425 Filed 4–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2010–0372; FRL–9292–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Epoxy Resin and Non-Nylon Polyamide Production (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before May 9, 2011.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2010–0372 to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 2, 2010 (75 FR 30813), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2010–0372, which is available for public viewing online at

http://www.regulations.gov, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* either to submit or view public comments, access the index listing of the contents of the docket, and to access those documents, whether submitted electronically or in paper will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments the electronic docket, go to *http://www.regulations.gov*.

Title: NESHAP for Epoxy Resin and Non-Nylon Polyamide Production (Renewal).

ICR Numbers: EPA ICR Number 1681.07, OMB Control Number 2060–0290.

ICR Status: This ICR is scheduled to expire on May 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Epoxy Resin and Non-Nylon Polyamide Production were proposed on May 16, 1994, and promulgated on March 8, 1995. This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR part 63, subpart W, regulating hazardous air pollutants from process vents, storage vessels, wastewater systems and equipment leaks. The standards require mandatory recordkeeping and reporting to document process information related to the source's ability to comply with the standards. This information is used by the Agency to identify sources subject to the standards and to insure that the maximum achievable control technology is being properly applied. Section 112 of the Clean Air Act, as amended in 1990, requires that EPA establish standards to limit emissions of hazardous air pollutants (HAPs) from stationary sources. The sources subject to these provisions emit the HAPs epichlorohydrin, and in lesser amounts, hydrochloric acid and methanol. Respondents are owners or operators of new and existing facilities that manufacture polymers and resins from epichlorohydrin. Source categories include basic liquid epoxy resin (BLR) producers and producers of epichlorohydrin-modified non-nylon polyamide resins, also known as wet strength resins (WSR).

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, subpart W, and 40 CFR part 63, Subpart A, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 214 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining, information, and disclosing and providing information. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Epoxy resin and non-nylon polyamide production.

Estimated Number of Respondents: 7.

Frequency of Response: Semiannually, quarterly and initially.

Estimated Total Annual Hour Burden: 3,853.

Estimated Total Annual Cost: $370,463, which includes $361,463 in labor costs, no capital/startup costs, and $9,000 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is no increase in the number of affected facilities, labor hours, or the number of responses compared to the previous ICR. There is, however, an increase in the estimated labor burden cost as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program change. The change in the labor burden cost estimates has occurred because we updated the labor rates, which resulted in an increase in cost.

Dated: April 4, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–8426 Filed 4–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2010–0364; FRL–9292–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Beryllium Rocket Motor Fuel Firing (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request

(ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before May 9, 2011.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2010–0364, to: (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia A. Williams, Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; Mail Code: 2223A; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 2, 2010 (75 FR 30813), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2010–0364, which is available for public viewing online at *http://www.regulations.gov* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NESHAP for Beryllium Rocket Motor Fuel Firing (Renewal).

ICR Numbers: EPA ICR Number 1125.06, OMB Control Number 2060–0394.

ICR Status: This ICR is scheduled to expire on May 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9 and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 61, subpart A, and any changes or additions to the Provisions are specified at 40 CFR part 61, subpart D. Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 8 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of beryllium rocket motor fuel firing facilities.

Estimated Number of Respondents: 1.

Frequency of Response: Initially and annually.

Estimated Total Annual Hour Burden: 8.

Estimated Total Annual Cost: $784, which includes $784 in labor costs; there are neither capital/startup costs nor operating and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the labor hours, or capital/startup and operation and maintenance costs in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the industry is very low, negative, or non-existent.

It should be noted that the wage rates in this ICR have been updated resulting in an overall increase in the labor cost.

Dated: April 4, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–8424 Filed 4–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2005–0530; FRL–9291–7]

Agency Information Collection Activities; Proposed Collection; Comment Request; Application for Reference and Equivalent Method Determination (Renewal)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to

submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 7, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2005–0530, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Office of Research and Development (ORD) Docket, *ord.docket@epa.gov*
- *Fax:* 202–566–1749.
- *Mail:* ORD Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of 2 copies.
- *Hand Delivery:* Environmental Protection Agency, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2005–0530. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Robert W. Vanderpool, U.S. Environmental Protection Agency, Human Exposure and Atmospheric Sciences Division, Process Modeling Research Branch, Mail Drop D205–03, Research Triangle Park, NC 27711; telephone number: 919–541–7877; facsimile number: 919–541–1153; e-mail: *Vanderpool.Robert@epa.gov*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–ORD–2005–0530, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Office of Research and Development is 202–566–1752.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under DATES.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

Affected entities: Entities potentially affected by this action are primarily manufacturers and vendors of ambient air quality monitoring instruments that are used by State and local air quality monitoring agencies in their Federally required air surveillance monitoring networks, and agents acting for such instrument manufacturers or vendors. Other entities potentially affected may include State or local air monitoring agencies, other users of ambient air quality monitoring instruments, or any other applicant for a reference or an equivalent method determination.

Title: Application for Reference and Equivalent Method Determination (Renewal).

ICR numbers: EPA ICR No. 0559.11; OMB Control No. 2080–0005.

ICR status: This ICR is currently scheduled to expire on July 31, 2011.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: To determine compliance with the NAAQS, State air monitoring agencies are required to use, in their air quality monitoring networks, air monitoring methods that have been formally designated by the EPA as either reference or equivalent methods under EPA regulations at 40 CFR part 53. A manufacturer or seller of an air monitoring method (*e.g.* an air monitoring sampler or analyzer) that seeks to obtain such EPA designation of one of its products must carry out prescribed tests of the method. The test results and other information must then be submitted to the EPA in the form of an application for a reference or equivalent method determination in accordance with 40 CFR part 53. The EPA uses this information, under the provisions of part 53, to determine whether the particular method should be designated as either a reference or equivalent method. After a method is designated, the applicant must also maintain records of the names and mailing addresses of all ultimate purchasers of all analyzers or samplers sold as designated methods under the method designation. If the method designated is a method for fine particulate matter ($PM_{2.5}$) and coarse particulate matter ($PM_{10-2.5}$), the applicant must also submit a checklist signed by an ISO-certified auditor to indicate that the samplers or analyzers sold as part of the designated method are manufactured in an ISO 9001-registered facility. Also, an applicant must submit a minor application to seek approval for any proposed modifications to previously designated methods.

A response to this collection of information is voluntary, but it is required to obtain the benefit of EPA designation under 40 CFR part 53. Submission of some information that is claimed by the applicant to be confidential business information may be necessary to make a reference or equivalent method determination. The confidentiality of any submitted information identified as confidential business information by the applicant will be protected in full accordance with 40 CFR part 53.15 and all applicable provisions of 40 CFR part 2.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 341 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 22.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: 1.

Estimated total annual respondent burden hours: 7,492.

Estimated total respondent annual costs: $681,625. This includes an estimated burden labor cost of $546,248, an estimated cost of $111,894 for capital investment, and an estimated $23,483 for operational and maintenance costs.

Are there changes in the estimates from the last approval?

A comprehensive review of ongoing and expected NAAQS reviews encompassing this ICR's period of performance determined that there is no expected change in the respondent burden, either with regards to labor hours or costs. Similarly, there is no expected change in the Agency burden (either hours or costs) associated with any expected changes in NAAQS regulations during this ICR's period of performance.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Jewel F. Morris,

Acting Director, National Exposure Research Laboratory.

[FR Doc. 2011–8423 Filed 4–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2010–0354; FRL–9291–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Vinyl Chloride (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before May 9, 2011.

ADDRESSES: Submit your comments, referencing Docket ID number EPA–HQ–OECA–2010–0354, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for

review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 2, 2010 (75 FR 30812), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID number EPA–HQ–OECA–2010–0354, which is available for public viewing online at www.regulations.gov, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at www.regulations.gov, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NESHAP for Vinyl Chloride (Renewal).

ICR Numbers: EPA ICR Number 0186.12, OMB Control Number 2060–0071.

ICR Status: This ICR is scheduled to expire on May 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 61, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 61, subpart F.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required quarterly.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 60 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of vinyl chloride production facilities.

Estimated Number of Respondents: 28.

Frequency of Response: Initially, quarterly and on-occasion.

Estimated Total Annual Hour Burden: 11,826.

Estimated Total Annual Cost: $2,369,531, which includes $1,109,531 in labor costs, no capital/startup costs and $1,260,000 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Secondly, the growth rate for the respondents is very low, negative, or non-existent. It should be noted that there is an apparent increase of one hour in respondent labor hours. This is due to the retention of decimal places in the Table 1 calculations and final rounding.

The capital/startup and operation and maintenance costs remain the same. The increase in cost to respondents is due to updating of the labor rates to reflect the most recent available estimates.

Dated: April 4, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–8422 Filed 4–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8996–3]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 03/28/2011 Through 04/01/2011 Pursuant to 40 CFR 1506.9.

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has included its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register**.

EIS No. 20110098, Draft EIS, USFS, WI, Phelps Vegetation and Transportation Management Project, Proposal to Implement Vegetation and Transportation Management Activities, Eagle River-Florence Ranger District, Vilas County, WI, Comment Period Ends: 05/24/2011,

Contact: Christine Brunner 715–479–2827.

EIS No. 20110099, Final EIS, FHWA, DC, South Capitol Street Project, Replacement of the Fredrick Douglas Memorial Bridge, from Firth Sterling Avenue SE to Independence Avenue and the Suitland Parkway from Martin Luther King, Jr Avenue SE to South Capitol Street., Washington, District of Columbia, Review Period Ends: 05/12/2011, Contact: Michael Hicks 202–219–3513.

EIS No. 20110100, Draft EIS, BLM, 00, China Mountain Wind Project and Jarbidge Resource Management Plan Amendment, Construction and Operation of 170 Wind Turbines and Associates Facilities, Application for Right-Of-Way Grant, Twin Falls County, Idaho, and Elko County, Nevada, southwest of Rogerson, Idaho and west of Jackpot, Nevada, Comment Period Ends: 07/06/2011, Contact: Scott Barker 208–735–2072.

EIS No. 20110101, Final EIS, USFS, CO, Big Moose Vegetation Management Project, Implementation, Divide Ranger District, Rio National Forest, Hinsdale and Mineral Counties, CO, Review Period Ends: 05/09/2011, Contact: Kirby Self 719–657–3321.

EIS No. 20110102, Draft EIS, USFS, UT, Black Fork Salvage Project, Proposal to Treat Timer Harvest, Prescribe Fire, and Mechanical Thinning, Uinta-Wasatch-Cache National Forest, Summit County, UT, Comment Period Ends: 05/23/2011, Contact: Tim Gill 307–789–3194.

EIS No. 20110103, Draft EIS, BLM, OR, Celatom Mine Expansion Project, Proposal to Approve, or Approve with Condition, Authorized Mine Plan of Operation Permit, Harney and Malheur Counties, OR, Comment Period Ends: 05/23/2011, Contact: William Dragt 541–573–4473.

EIS No. 20110104, Final EIS, NRC, NJ, Generic—License Renewal of Nuclear Plants, Regarding Hope Creek Generating Station and Salem Nuclear Generating Station, Units 1 and 2, Supplement 45 to NUREG–1437, Lower Alloway Creek, Township, Salem County, NJ, Review Period Ends: 05/09/2011, Contact: Leslie Perkins 301–415–2375.

EIS No. 20110105, Final EIS, USFS, UT, Tropic to Hatch 138kV Transmission Line Project, Proposing Construction of a new 138 kV transmission Line that would replace some or all the existing 69 kV Transmission Line, Applications for Special-Use Permits and/or Right-of-Way Grants, Grand Staircase-Escalante National Monument Management Plan Amendment, Garfield County, UT, Review Period Ends: 05/09/2011, Contact: Susan Baughman 435–865–3703.

EIS No. 20110106, Draft EIS, BIA, NM, Pueblo of Jemez 70.277 Arce Fee-To-Trust Transfer and Casino Project, Implementation, Dona Ana County, NM, Comment Period Ends: 06/01/2011, Contact: Priscilla Wade 505–563–3417

EIS No. 20110107, Final EIS, FHWA, IL, Illinois 336 Corridor Project, (Federal Aid Primary Route 315), Proposed Macomb Bypass in McDonough County, to I–474 west of Peoria in Peoria County, Funding, McDonough, Fulton and Peoria Counties, IL, Review Period Ends: 05/09/2011, Contact: Matt Fuller 217–492–4625.

Amended Notices

EIS No. 20110041, Draft EIS, BLM, AZ, Northern Arizona Proposed Withdrawal Project, Proposed 20-Year Withdrawal of Approximately 1 Million Acres of Federal Mineral Estate, Coconino and Mohave Counties, AZ, Comment Period Ends: 05/04/2011, Contact: Chris Horyza 602–417–9446.

Revision to FR Notice Published 02/18/2011: Extending Comment Period from 04/04/2011 to 05/04/2011.

Dated: April 5, 2011.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–8429 Filed 4–7–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS11–13]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: OCC—250 E Street, SW., Room 1C/1CA, Washington, DC 20219.

Date: April 13, 2011.

Time: 10:30 a.m.

Status: Open.

Matters To Be Considered

Summary Agenda

March 15, 2011 minutes—Open Session.

(No substantive discussion of the above items is anticipated. These matters will be resolved with a single vote unless a member of the ASC requests that an item be moved to the discussion agenda.)

Discussion Agenda

Appraisal Foundation December 2010 Grant Reimbursement Request.

Appraisal Foundation 2010 Grant Reprogramming Reimbursement Request.

California Compliance Review.

Colorado Compliance Review.

Michigan Compliance Review.

How To Attend and Observe an ASC Meeting

E-mail your name, organization and contact information *meetings@asc.gov.*

You may also send a written request via U.S. Mail, fax or commercial carrier to the Executive Director of the ASC, 1401 H Street, NW., Ste 760, Washington, DC 20005. Your request must be received no later than 4:30 p.m., ET, on the Monday prior to the meeting. If that Monday is a Federal holiday, then your request must be received 4:30 p.m., ET on the previous Friday. Attendees must have a valid government-issued photo ID and must agree to submit to reasonable security measures. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: April 5, 2011.

James R. Park,

Executive Director.

[FR Doc. 2011–8396 Filed 4–7–11; 8:45 am]

BILLING CODE P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS11–14]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with Section 1104 (b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in closed session:

Location: OCC—250 E Street, SW., Room 1C/1CA, Washington, DC 20219.

Date: April 13, 2011.

Time: Immediately following the ASC open session.

Status: Closed.

Matters To Be Considered

March 15, 2011 minutes—Closed Session.

Preliminary discussion of State Compliance Reviews.

Dated: April 5, 2011.

James R. Park,

Executive Director.

[FR Doc. 2011–8397 Filed 4–7–11; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: April 13, 2011—10 a.m.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: The meeting will be an Open Session.

Matters To Be Considered

1. Update on Situation at the Fukushima Nuclear Power Plant in Japan.

2. Staff Review and Recommendation Concerning Activities that May Be Conducted without Further Agreement Filings Under Commission Rule 46 CFR 535.408.

3. Discussion of Current Trade Conditions and Next Steps on Commission's Fact Finding 26 Recommendations.

4. Discussion of Level of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages.

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Secretary, (202) 523–5725.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–8571 Filed 4–6–11; 4:15 pm]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 25, 2011.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Kristine H. Cleary, Whitefish Bay, Wisconsin,* as an individual; trustee of the 2008 Family Irrevocable Trust KHC ("KHC Trust"); and custodian of three minor children to acquire control of First Bancorporation, Inc. ("First BC") and thereby indirectly acquire control of State Bank Financial ("Bank"), both of La Crosse, Wisconsin. Sandra G. Cleary, La Crosse, Wisconsin, as an individual; trustee of the 2008 Family Irrevocable Trust SGC ("SGC Trust"); and custodian of two minor children to acquire control of First BC and thereby indirectly acquire control of Bank. In addition, KHC Trust and SGC Trust, both of La Crosse, Wisconsin, and five minor children to acquire and retain shares of First BC and thereby join the Cleary Family Group, which controls First BC.

2. *Riki Rae Davidson, Devin Scott, Kayla Scott, Shad Scott, and Shann Scott, all of Billings, Montana,* individually; First Interstate Bank as trustee of three separate Scott family trusts; Sandra Suzor as Voting Agent of five separate Scott family trusts; Susan Baker as Voting Agent of one Scott family trust and as co-trustee of one Scott family trust; Homer Rollins Scott as Voting Agent of two separate Scott family trusts; and Charles Heyneman as Voting Agent of two separate Scott family trusts, all of Billings, Montana, for approval to join the Scott Family Group, which controls 25 percent or more of First Interstate BancSystem, Inc., Billings, Montana, and thereby indirectly controls First Interstate Bank, Billings, Montana.

Board of Governors of the Federal Reserve System, April 5, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–8398 Filed 4–7–11; 8:45 am]

BILLING CODE 6210–01–P

GOVERNMENT ACCOUNTABILITY OFFICE

Advisory Council on Government Auditing Standards; Notice of Meeting

The Advisory Council on Government Auditing Standards will meet Wednesday, May 11, 2011, from 8:15 a.m. to 3:30 p.m., in the Staats Briefing Room (7C13) of the Government Accountability Office building, 441 G Street, NW., Washington, DC.

The Advisory Council on Government Auditing Standards will hold a meeting to discuss updates and revisions of the 2007 Revision of Government Auditing Standards. The meeting is open to the public. Members of the public will be provided an opportunity to address the Council with a brief (five-minute) presentation in the afternoon on matters directly related to the proposed update and revision.

Any interested person who plans to attend the meeting as an observer must contact Jennifer Allison, Executive Assistant, 202–512–3423. A form of picture identification must be presented to the GAO Security Desk on the day of the meeting to obtain access to the GAO building. You must enter the building at the G Street entrance. For further information, please contact Mrs. Allison. Please check the Government Auditing Standards Web page (*http://www.gao.gov/govaud/ybk01.htm*) one week prior to the meeting for a final agenda.

[Public Law 67–13, 42 Stat. 20 (June 10, 1921).]

James R. Dalkin,

Director, Financial Management and Assurance.

[FR Doc. 2011–8430 Filed 4–7–11; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization, Functions, and Delegations of Authority: Office of the Secretary; Office of the Assistant Secretary for Financial Resources

Part A, Office of the Secretary, Statement of Organization, Functions

and Delegations of Authority for the Department of Health and Human Services (HHS) is being amended at Chapter AM, Office of the Assistant Secretary for Financial Resources (ASFR), as last amended at 75 FR 369–370, dated January 5, 2010, 74 FR 57679–57682, dated November 9, 2009, 74 FR 39325–39327, dated August 6, 2009, 74 FR 18238–18238, dated April 21, 2009, 73 FR 31486–31487, dated June 2, 2008, 72 FR 56074–75, dated October 2, 2007, 72 FR 2282–2283, dated January 18, 2007, and 71 FR 38884–88, dated July 10, 2006, as follows:

1. Under Chapter AMS, Office of Finance, Section AMS.20 Functions, Paragraph 3, Office of Program Management and Systems Policy (AMS2), retitle all references to the "Division of Systems Policy, Payment Integrity and Audit Resolution (AMS22)" as the "Division of Systems Policy and Audit Resolution (AMS22)."

2. Under Chapter AMS, Office of Finance, Section AMS.20 Functions, Paragraph 3, Office of Program Management and Systems Policy (AMS2), Section b, Division of Systems Policy and Audit Resolution (AMS22), delete Section "(2)" and all associated subsections (*i.e.,* section (a) thru section (c)) in their entirety.

3. Under Chapter AMS, Office of Finance, Section AMS.10 Organization, insert the following new office after the Office of Program Management and Systems Policy, "Office of Program Integrity Coordination (AMS3)."

4. Under Chapter AMS, Office of Finance, Section AMS.20 Functions, insert the following after Paragraph 3:

4. *Office of Program Integrity Coordination (AMS3).* The Office of Program Integrity Coordination serves as the central point for coordinating program integrity issues across the Department. The Office coordinates program integrity related activities and projects and supports Department-wide communication and exchange of program integrity information. The office is responsible for overseeing: program integrity assessments, including development of strategies and implementation plans to increase program integrity; establishment of metrics; ongoing program integrity monitoring; reviews of particular programs with program integrity concerns and payment accuracy improvement activities.

The Office of Program Integrity Coordination (OPIC) consists of the following components:

• Division of Program Integrity Assessment and Improvement (AMS31).

• Division of Outreach, Communications, and Training (AMS32).

• Division of Payment Accuracy Improvement (AMS33).

a. *Division of Program Integrity Assessment and Improvement (AMS31):* The Division's responsibilities include: Developing tools and guidance regarding program integrity; Providing technical assistance and direction to Operating and Staff Divisions on implementing program integrity improvements; Identifying and utilizing innovative tools that increase program integrity across the Department; and other activities that advance program integrity.

b. *Division of Outreach, Communications, and Training (AMS32):* The Division's responsibilities include: Providing support for the Secretary's Council on Program Integrity, the Program Integrity Coordinating Council, Program Integrity response teams, and other program integrity groups; Coordinating program integrity related communications internally and working closely with Assistant Secretary for Public Affairs and Divisions on the preparation of public statements and communications related to program integrity; Developing and/or providing program integrity related training materials; and other activities that advance the communication, training and public relations aspects of program integrity.

c. *Division of Payment Accuracy Improvement (AMS33):* The Division's responsibilities include: Implementing the Improper Payment Elimination and Recovery Act of 2010 and related executive order and improper payment guidance across the Department; Providing analyses of high risk programs and coordinating error rate measurements and improvements for high risk programs; and other activities that support improving payment accuracy.

5. Delegation of Authority. Pending further redelegation, directives or orders made by the Secretary or ASFR, all delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegations, provided they are consistent with this reorganization.

Dated: March 30, 2011.

E.J. Holland, Jr.,

Assistant Secretary for Administration.

[FR Doc. 2011–8358 Filed 4–7–11; 8:45 am]

BILLING CODE 4150–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10185, CMS–10261, and CMS–R–268]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Part D Reporting Requirements and Supporting Regulations; *Use:* 42 CFR part 423, § 423.514, requires each part D Sponsor to have an effective procedure to provide statistics indicating: the cost of its operations, the patterns of utilization of its services, the availability, accessibility, and acceptability of its services, information demonstrating it has a fiscally sound operation and other matters as required by CMS. In addition, subsection 423.505 of the Medicare Prescription Drug, Improvement, and Modernization Act (MMA), establishes as a contract provision that Part D Sponsors must comply with the reporting requirements for submitting drug claims and related information to CMS. Data collected via Medicare Part D Reporting Requirements will be an integral resource for oversight, monitoring, compliance and auditing activities necessary to ensure quality provision of the Medicare Prescription Drug Benefit to beneficiaries. Data will be validated, analyzed, and utilized for trend reporting by the Division of

Clinical and Operational Performance (DCOP) within the Medicare Drug Benefit Group. *Form Number:* CMS–10185 (OMB#: 0938–0992); *Frequency:* Yearly, Quarterly, Semi-Annually; *Affected Public:* Private Sector, business or other for-profit; *Number of Respondents:* 2993; Total *Annual Responses:* 48,490; *Total Annual Hours:* 128,754. (For policy questions regarding this collection contact LaToyia Grant at 410–786–5434. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of currently approved collection; *Title of Information Collection:* Part C Medicare Advantage (MA) Reporting Requirements and Supporting Regulations; *Use:* CMS has authority to establish reporting requirements for Medicare Advantage Organizations (MAO's) as described in 42 CFR 422.516(a). Each MAO must have an effective procedure to develop, compile, evaluate, and report to CMS, to its enrollees, and to the general public, at the times and in the manner that CMS requires, and while safeguarding the confidentiality of the doctor-patient relationship, statistics and other information with respect to the cost of its operations, patterns of service utilization, availability, accessibility, and acceptability of its services, developments in the health status of its enrollees, and other matters that CMS may require. Data collected via Medicare Part C Reporting Requirements will be an integral resource for oversight, monitoring, compliance and auditing activities necessary to ensure quality provision of the benefits provided by MA plans to enrollees. *Form Number:* CMS–10261 (OMB# 0938–1054); *Frequency:* Yearly, Quarterly; *Affected Public:* Business or other for-profits; *Number of Respondents:* 588; Total *Annual Responses:* 1158; Total *Annual Hours:* 245,528. (For policy questions regarding this collection contact Terry Leid at 410–786–8973. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* CMS Survey Tool for *http://www.cms.gov* and *http://www.medicare.gov; Use:* The purpose of this submission is to continue to collect information from Internet users as they exit from the Web sites Medicare.gov and CMS.gov. To ensure that we gather information about user reactions to the Web sites, we have developed a survey tool that users can complete when they exit either site or by accessing a link on the bottom bar on the page. The responses on this survey tool will help CMS to make appropriate changes to the Web sites in the future. The survey tool contains questions about the information that visitors are seeking from the sites, the degree to which either site was useful to them, the improvements that they would like to see in the sites, and their general comments. *Form Number:* CMS–R–268 (OMB# 0938–0756); *Frequency:* Yearly; *Affected Public:* Individuals and households, Private sector—Business or other for-profit; *Number of Respondents:* 7,000; *Total Annual Responses:* 9,100; *Total Annual Hours:* 1,167. (For policy questions regarding this collection contact Matthew Aiken at 410–786–1029. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on May 9, 2011: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer. *Fax Number:* (202) 395–6974. *E-mail: OIRA_submission@omb.eop.gov.*

Dated: April 1, 2011.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–8464 Filed 4–7–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10252, CMS–1856 and CMS–1893]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Certificate of Destruction for Data Acquired from the Centers for Medicare and Medicaid Services; *Use:* The Certificate of Destruction is used by recipients of CMS data to certify that they have destroyed the data they have received through a CMS Data Use Agreement (DUA). The DUA requires the destruction of the data at the completion of the project/expiration of the DUA. The DUA addresses the conditions under which CMS will disclose and the User will maintain CMS data that are protected by the Privacy Act of 1974, § 552a and the Health Insurance Portability Accountability Act of 1996. CMS has developed policies and procedures for such disclosures that are based on the Privacy Act and the Health Insurance Portability Act (HIPAA). The Certificate of Destruction is required to close out the DUA and to ensure the data are destroyed and not used for another purpose. *Form Number:* CMS–10252 (OMB# 0938–1046); *Frequency:* On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 500; *Total Annual Responses:* 500; *Total Annual Hours:* 84. (For policy questions regarding this collection, contact Sharon Kavanagh at (410) 786–5441. For all other issues call (410) 786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* (CMS–1856) Request for Certification in the Medicare and/or Medicaid Program to Provide Outpatient Physical Therapy and/or Speech Pathology Services, and (CMS–1893) Outpatient Physical Therapy—Speech Pathology Survey Report; *Use:* CMS–1856 is used as an application to be completed by providers of outpatient physical therapy and/or speech-

language pathology services requesting participation in Medicare/Medicaid programs. This form initiates the process for obtaining a decision as to whether the conditions of participation are met as a provider of outpatient physical therapy and/or speech-language pathology services. It is used by the State agencies to enter new provider into the ASPEN (Automated Survey Process Environment). CMS–1893 is used by the State survey agency to record data collected during an on-site survey of a provider of outpatient physical therapy and/or speech-language pathology services, to determine compliance with the applicable conditions of participation, and to report this information to the Federal Government. The form is primarily a coding worksheet designed to facilitate data reduction and retrieval into the ASPEN system. The information needed to make certification decisions is available to CMS only through the use of information abstracted from the form; *Form Numbers:* CMS–1856 and CMS–1893 (OMB#: 0938–0065); *Frequency:* Annually, occasionally; *Affected Public:* Private Sector; Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 2,968; *Total Annual Responses*: 495; *Total Annual Hours:* 866. (For policy questions regarding this collection contact Georgia Johnson at 410–786–6859. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office at 410–786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by June 7, 2011.

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 1, 2011.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–8462 Filed 4–7–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10382]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Center for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR 1320.13. This is necessary to ensure compliance with an initiative of the Administration. We cannot reasonably comply with the normal clearance procedures due to an unexpected event as stated in 5 CFR 1320.13(a)(2)(iii). The use of the normal clearance procedures would cause a statutory deadline to be missed.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Medicaid Emergency Psychiatric Demonstration *Use:* Section 2707 of the Patient Protection and Affordable Care Act was enacted to implement a demonstration to study the effects of allowing Medicaid payment for the inpatient stabilization of a more serious mental health related problem. That is, to provide payment for inpatient stabilization for psychiatric patients aged 21 to 64 who express suicidal or homicidal gestures and are considered a danger to themselves or others.

By allowing coverage for inpatient admission for emergency psychiatric treatment otherwise prohibited by the Medicaid institutions for mental diseases exclusion, the Demonstration may improve access to appropriate psychiatric care, improve quality of care for Medicaid patients, and encourage greater availability of inpatient psychiatric beds, thereby reducing the necessity of psychiatric boarding.

As a condition for receiving payment under this Demonstration, a State shall be responsible for collecting and reporting information to the Centers for Medicare & Medicaid Services (CMS) about the conduct of the Demonstration in the State for the purposes of providing Federal oversight and the evaluation of the Demonstration and required to cooperate with the CMS evaluation team. CMS is also required to submit to Congress, a recommendation as to whether the Demonstration project should be continued after December 31, 2013, and expanded on a national basis.

The statute requires that a State seeking to participate in this Demonstration project shall submit an application that includes such information, provisions, and assurances necessary to assess the State's ability to conduct the Demonstration as compared with other State applicants. The State Medical Director will submit the Demonstration application proposal. *Form Number:* CMS–10382 (OMB#: 0938–New); *Frequency:* Once; *Affected Public:* Individuals or Households; *Number of Respondents:* 44; *Total Annual Responses:* 54; *Total Annual Hours:* 2,106. (For policy questions regarding this collection contact Diana Ayres 410–786–7203. For all other issues call 410–786–1326.)

CMS is requesting OMB review and approval of this collection by *May 9,*

2011, with a 180-day approval period. Written comments and recommendations will be considered from the public if received by the individuals designated below by May 4, 2011.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/regulations/pra* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by May 4, 2011.

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

3. *By Facsimile or E-mail to OMB.* OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer. *Fax Number:* (202) 395–6974. *E-mail: OIRA_submission@omb.eop.gov.*

Dated: April 1, 2011.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–8459 Filed 4–7–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0544]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Application for Participation in the Medical Device Fellowship Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Application for Participation in the Medical Device Fellowship Program" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@FDA.HHS.GOV*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 27, 2011 (76 FR 4913), the Agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0551. The approval expires on March 31, 2014. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: April 4, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–8369 Filed 4–7–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program: Statement of Reasons for Not Conducting Rule-Making Proceedings

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In accordance with section 2114(c)(2)(B) of the Public Health Service Act, notice is hereby given of the reasons for not conducting a rule-making proceeding for adding Guillain-Barré Syndrome (GBS) to the Vaccine Injury Table at this time.

DATES: Written comments are not being solicited.

FOR FURTHER INFORMATION CONTACT: Geoffrey Evans, M.D., Director, Division of Vaccine Injury Compensation, Healthcare Systems Bureau, Health Resources and Services Administration (HRSA), Room 11C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number (301) 443–6593.

SUPPLEMENTARY INFORMATION: The National Childhood Vaccine Injury Act of 1986, title III of Public Law 99–660 (42 U.S.C. 300aa–10 *et seq.*) established the National Vaccine Injury Compensation Program (VICP) for persons found to be injured by vaccines. Under this Federal program, petitions for compensation are filed with the United States Court of Federal Claims (Court). The Court, acting through special masters, makes findings as to eligibility for, and amount of, compensation. In order to gain entitlement to compensation under title XXI of the Public Health Service (PHS) Act for a covered vaccine, a petitioner must establish a vaccine-related injury or death, either by proving that the first symptom of an injury/condition, as defined by the Qualifications and Aids to Interpretation, occurred within the time period listed on the Vaccine Injury Table (Table), and therefore presumed to be caused by a vaccine (unless another cause is found), or by proof of vaccine causation, if the injury/condition is not on the Table or did not occur within the time period specified on the Table.

The statute authorizing the VICP provides for the inclusion of additional vaccines in the VICP when they are recommended by the Centers for Disease Control and Prevention (CDC) for routine administration to children. See section 2114(e)(2) of the PHS Act, 42 U.S.C. 300aa–14(e)(2). Consistent with section 13632(a)(3) of Public Law 103–66, the regulations governing the VICP provide that such vaccines will be included in the Table as of the effective date of an excise tax to provide funds for the payment of compensation with respect to such vaccines. 42 CFR 100.3(c)(5). The statute authorizing the VICP also authorizes the Secretary to create and modify a list of injuries,

disabilities, illnesses, conditions, and deaths (and their associated time frames) associated with each category of vaccines included on the Table. See sections 2114(c) and 2114(e)(2) of the PHS Act, 42 U.S.C. 300aa–14(c) and 30aa–14(e)(2). Finally, section 2114(c)(2) of the PHS Act, 42 U.S.C. 300aa–14(c)(2) provides that:

[a]ny person (including the Advisory Commission on Childhood Vaccines) may petition the Secretary to propose regulations to amend the Vaccine Injury Table. Unless clearly frivolous, or initiated by the Commission, any such petition shall be referred to the Commission for its recommendations. Following—

(A) receipt of any recommendation of the Commission, or

(B) 180 days after the date of the referral to the Commission, whichever occurs first, the Secretary shall conduct a rule-making proceeding on the matters proposed in the petition or publish in the **Federal Register** a statement of reasons for not conducting such proceeding.

On September 9, 2010, a private person submitted a petition to amend the Table. This petition was submitted to the Chief Special Master, Sandra Lord, with a copy to Dr. Geoffrey Evans, Director, Division of Vaccine Injury Compensation. Pursuant to the VICP statute, Dr. Evans referred the petition to the Commission on October 28, 2010. The Commission discussed the petition at its meeting on March 3, 2011. At the conclusion of this discussion, the Commission voted unanimously to recommend that the Secretary not proceed with rule-making to amend the Table as requested in the petition.

The petition requests that the Secretary amend the Table to include Guillain-Barré Syndrome (GBS) as an injury following certain vaccines. The petition asserts that "[e]very drug company admits that GBS is linked to many different vaccines including influenza, meningitis, and cervical cancer [human papillomavirus]." The petitioner asserts that her mother received the seasonal influenza vaccine, and was subsequently diagnosed with GBS. Other than the assertion cited, the petition does not cite scientific support, nor indicate specifically for which vaccines GBS should be added as an injury, nor indicate any appropriate time-frame.

Nonetheless, the Secretary takes very seriously proposals to modify the Table. Prior to receipt of the petition, in 2008, the Secretary contracted with the Institute of Medicine (IOM) to review the epidemiological, clinical, and biological evidence regarding adverse health events associated with specific vaccines covered by the VICP. The vaccines to be reviewed are:

- Varicella vaccines,
- influenza vaccines,
- hepatitis B vaccine,
- human papillomavirus vaccines,
- hepatitis A vaccines,
- meningococcal vaccines,
- measles-mumps rubella vaccines, and
- diphtheria, tetanus, pertussis vaccines.

The IOM committee will author a consensus report with conclusions on the evidence bearing on causality and the evidence regarding the biological mechanisms that underlie specific theories for how a specific vaccine is related to a specific adverse event. In particular, the report will contain updated findings on the possible causal relationship between certain VICP-covered vaccines and GBS, as well as other possible injuries/medical conditions. The Secretary expects to receive the IOM consensus report in early summer. After receipt of the consensus report, and a careful analysis of the important scientific and policy considerations raised by the findings in the report, the Secretary will consider whether to engage in a rule-making proceeding to modify the Table. As required by law, any such rule-making proceeding would include notice and opportunity for a public hearing and at least 180 days of public comment. See section 2114(c)(1) of the PHS Act, 42 U.S.C. 300aa–14(c)(1). Also as required by law, the Secretary would provide to the Commission a copy of the proposed regulation or revision, request recommendations and comments by the Commission, and afford the Commission at least 90 days to make such recommendations. See section 2114(d) of the PHS Act, 42 U.S.C. 300aa–14(d).

The Secretary intends to consider whether to engage in a rule-making process with the benefit of the important scientific information soon to be provided by the IOM; to begin the lengthy process without such additional information would not result in rule-making founded on the best and most recent scientific knowledge. For these reasons, it has been determined not to conduct a rule-making proceeding based on the petition received at this time.

Dated: April 1, 2011.

Mary K. Wakefield,

Administrator.

[FR Doc. 2011–8395 Filed 4–7–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Notice of Charter Renewal

In accordance with Title 41 of the U.S. Code of Federal Regulations, Section 102–3.65(a), notice is hereby given that the Charter for the Center for Scientific Review Advisory Council (CSRAC), formerly National Institutes of Health Peer Review Committee, was renewed for an additional two-year period on March 31, 2011.

It is determined that the CSRAC is in the public interest in connection with the performance of duties imposed on the National Institutes of Health by law, and that these duties can best be performed through the advice and counsel of this group.

Inquiries may be directed to Jennifer Spaeth, Director, Office of Federal Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail code 4875), Telephone (301) 496–2123, or *spaethj@od.nih.gov.*

Dated: April 4, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–8440 Filed 4–7–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases

Special Emphasis Panel; NIDDK Genetics Repository Contract Technical Application Review.

Date: May 4, 2011.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Xiaodu Guo, MD, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 4, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–8435 Filed 4–7–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Translational Research.

Date: May 17, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Michele L. Barnard, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542. (301) 594–8898. *barnardm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 4, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–8436 Filed 4–7–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Computational Cellular Imaging.

Date: May 2–3, 2011.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting.)

Contact Person: Behrouz Shabestari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892, (301) 435–2409, *shabestb@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 4, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–8442 Filed 4–7–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: April 29, 2011.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Camilla E. Day, PhD, Scientific Review Officer, CIDR, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4075, Bethesda, MD 20892, 301–402–8837, *camilla.day@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: April 4, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–8437 Filed 4–7–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5477–N–14]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh

Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 31, 2011.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2011–8098 Filed 4–7–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2010–N222; 10137–1265–0000 S3]

Protection Island and San Juan Islands National Wildlife Refuges, Jefferson, San Juan, Skagit, Island, and Whatcom Counties, WA; Final Comprehensive Conservation Plan, Wilderness Stewardship Plan, and Finding of No Significant Impact for Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of our final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for the environmental assessment (EA) for Protection Island and San Juan Islands National Wildlife Refuges (NWRs). In this final CCP, we describe how we will manage these refuges for the next 15 years.

ADDRESSES: You may view or obtain copies of the final CCP and FONSI/EA by any of the following methods. You may request a CD–ROM or an electronic copy.

Agency Web Site: Download a copy of the documents at *http://pacific.fws.gov/planning.*

E-mail: FW1Planning@fws.gov. Include "Protection Island and San Juan Islands NWRs final CCP" in the subject line of the message.

Mail: U.S. Fish and Wildlife Service, Washington Maritime NWRC, 715 Holgerson Road, Sequim, WA 98382.

In-Person Viewing or Pickup: Call 360–457–8451 to make an appointment during regular business hours at 715 Holgerson Road, Sequim, WA.

Local Library or Libraries: The documents are also available for review at the libraries listed under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Kevin Ryan, Project Leader, 360–457–8451, *kevin_ryan@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for Protection Island and San Juan Islands NWRs. We started this process through a notice in the **Federal Register** (72 FR 45444; August 14, 2007). We released the draft CCP and the EA to the public, announcing and requesting comments in a notice of availability in the **Federal Register** (75 FR 51098; August 18, 2010).

Protection Island NWR is located in the Strait of Juan de Fuca near the entrance to Discovery Bay in Jefferson County, Washington. It includes 659 acres of land and tideland. Protection Island NWR was established to provide habitat for a diversity of birds, with particular emphasis on nesting bald eagles and seabirds, as well as to protect the hauling-out area for marine mammals. It has one of the largest colonies of rhinoceros auklets in North America. The Refuge also provides opportunities for scientific research and wildlife-oriented education and interpretation.

Most of the San Juan Islands NWR consists of rocks, reefs, and islands scattered throughout the San Juan Archipelago. Two islands, Smith and Minor, are located south of the archipelago within the Strait of Juan de Fuca. The Refuge consists of approximately 449 acres in San Juan, Skagit, Island, and Whatcom Counties, Washington. Most (353 acres) of San Juan Islands NWR is designated wilderness known as the San Juan Islands Wilderness Area. San Juan Islands NWR was established to facilitate management of migratory birds, including serving as a breeding ground and winter sanctuary for native birds. It was also intended to be a refuge for other wildlife. This refuge is particularly important to breeding black oystercatchers, cormorants, and harbor seals.

We announce our decision and the availability of the FONSI for the final CCP for Protection Island and San Juan Islands NWRs in accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements. We completed a thorough analysis of impacts on the human environment, which we included in the EA that accompanied the draft CCP.

The CCP will guide us in managing and administering Protection Island and San Juan Islands Refuges for the next 15 years. Alternative B, as we described in the final CCP, is the foundation for the CCP, with slight modifications.

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

CCP Alternatives, Including Selected Alternative

Our draft CCP and our EA (75 FR 51098) addressed several issues. To address these, we developed and evaluated the following alternatives:

Alternative A: Current Management

Under Alternative A, the refuges would continue with current management, which focuses on stewardship, including removing unnecessary roads and human structures; allowing natural processes to occur with minimal human intervention; monitoring wildlife species; and working with partners to reduce the risk of oil spills, clean up marine debris, and educate boaters to minimize human-caused wildlife disturbance. Recreational activities would continue as they have in the past and be facilitated through a State Parks partnership.

Alternative B: Preferred Alternative

This Alternative would continue many of the activities in Alternative A, but would also include a greater number of active habitat management projects, such as removal of deer from Protection Island to enhance seabird nesting

habitat and forest habitat; carrying out of restoration projects on the spits, grasslands, and forests to increase native plant diversity; and facilitation of research studies that answer refuge management questions. Public use changes include enforcing no-pets regulations on all San Juan Islands Refuge lands, and closing some areas on Turn Island, including all of the rocky shoreline to the east and the southeast "pocket" beach, as well as some of the Island's interior. Overnight camping on Turn and Matia Islands would be limited to visitors arriving by human-powered craft, and a camping reservation system would be initiated. There would be more emphasis on enhancing the public's understanding and appreciation of the refuges' natural, cultural, and wilderness resources through both on- and off-refuge interpretation and education programs. There would be fewer large signs but more medium-sized signs installed on San Juan Islands Refuge units to discourage close approach or trespassing on closed islands. Regulatory signs on both refuges would be updated with improved wording and sizing to enhance their effectiveness. There would also be more emphasis on working with existing partners and developing new partnerships to accomplish objectives.

Alternative C

This Alternative is very similar to Alternative B. However, under Alternative C there would be fewer acres of native habitat restoration, as well as fewer research studies and surveys. Camping would continue, but with fewer campsites on Matia Island. Turn Island would be limited to day-use only. Compared to Alternative B, fewer and mostly smaller signs would be used in Alternative C to identify closed refuge islands and reduce human-caused wildlife disturbance.

Comments

We requested comments on the draft CCP and the EA for Protection Island and San Juan Islands NWRs from August 13, 2010, to September 17, 2010 (75 FR 51098). We sent notification to over 700 individuals and organizations on our mailing list for this CCP, provided the draft CCP and EA on the Regional Web site, and provided a press release to local media. We received over 40 letters and e-mails from the public. Based on a thorough evaluation of the public comments we received, we slightly modified the CCP/EA. Changes include modifications to several CCP strategies, including:

- We will begin coordination with Treaty Tribes regarding step-down planning for deer removal on Protection Island;
- We will perform additional monitoring of visitors' use before deciding whether to initiate a new camping reservation system;
- We added several potential partners to Appendix G; and
- We updated Appendix E, the Integrated Pest Management Program, with information from a new Service policy (569 FW 1).

Selected Alternative

After considering the comments we received, we have selected Alternative B for implementation. Under Alternative B, the Service and partners will:

- Protect, maintain, and where feasible, restore habitats—including shoreline, sandy bluffs, grasslands and balds, forests and woodlands, and wetlands—for priority species, including seabirds, shorebirds, bald eagles, marine mammals, and endemic plants.
- Minimize human-caused wildlife disturbance on and near closed refuge islands, rocks, and shorelines.
- Manage invasive species and State- and county-listed noxious weeds.
- Survey and protect paleontological and cultural resources.
- Increase inventory and monitoring efforts.
- Encourage and facilitate research that addresses refuge management questions.
- Design and implement a site plan for refuge administration and research facilities on Protection Island in order to reduce the human "footprint," improve refuge management capability, improve research coordination, and reduce liquid fuel consumption by expanding solar power capabilities.
- Reduce the number of campsites on Turn Island and limit camping on both Turn and Matia Islands to visitors arriving by human-powered boats.
- Enhance and increase on- and off-refuge environmental education and interpretation, as well as wildlife observation and photography opportunities.
- Increase outreach to boaters, schoolchildren, local residents, and tourists.
- Use signs and other management techniques efficiently and effectively on wilderness rocks and islands to assist in maintaining their wildlife and intrinsic values while minimizing impacts to wilderness character.

Public Availability of Documents

In addition to the methods in **ADDRESSES**, you can view documents at the following libraries:

Library	Address	Phone No.
Anacortes Public Library	1220 10th Street, Anacortes, WA 98221	360–293–1910
Bellingham Public Library	210 Central Avenue CS–9710, Bellingham, WA 98227	360–778–7323
Clinton Public Library	4781 Deer Lake Road, Clinton, WA 98236	360–341–4280
Coupeville Public Library	788 NW. Alexander, Coupeville, WA 98239	360–678–4911
Evergreen State College Library	2700 Evergreen Parkway NW., Olympia, WA 98505	360–867–6250
Island Public Library	2144 S. Nugent Road, Lummi Island, WA 98262	360–758–7145
Jefferson County Central Library	P.O. Box 990, Port Hadlock, WA 98339	360–385–6544
Lopez Island Public Library	2225 Fisherman Bay Rd., Lopez Island, WA 98261	360–468–2265
North Olympic Public Library	630 N. Sequim Ave., Sequim, WA 98382	360–683–1161
Oak Harbor Public Library	1000 SE. Regatta Dr., Oak Harbor, WA 98377	360–675–5115
Orcas Island Public Library	500 Rose St., Eastsound, WA 98245	360–376–4985
Peninsula College Library	1502 E. Lauridsen Blvd., Port Angeles, WA 98362	360–417–6280
San Juan Islands Library	1010 Guard St., Friday Harbor, WA 98250	360–378–2798
Shaw Island Library	P.O. Box 844, Shaw Island, WA 98286	N/A
University of Puget Sound Library	1500 N. Warner St. Campus, Mail Box 1021 Tacoma, WA 98416	253–879–3669
University of Washington Library	Box 3529000, Seattle, WA 98195	206–543–0242
Waldron Island Library	Waldron Island, WA	360–588–3383
Washington State Library	P.O. Box 424, Olympia, WA 98504	360–704–5250
Washington State University Library	Owen Science Library, Washington State University, Pullman, WA 99164	509–335–6691
Western Washington University	516 High St., Bellingham, WA 98225	360–650–3050

Dated: December 21, 2010.

Richard R. Hannan,

Acting Regional Director, Portland, Oregon.

[FR Doc. 2011–8418 Filed 4–7–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

National Cooperative Geologic Mapping Program (NCGMP) and National Geological and Geophysical Data Preservation Program (NGGDPP) Advisory Committee

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 106–148, the NCGMP and NGGDPP Advisory Committee will meet on June 22nd and June 23rd, 2011, in room 3A417 of the U.S. Geological Survey Headquarters building, 12201 Sunrise Valley Drive, Reston, Virginia 20192. The Advisory Committee, comprising representatives from Federal agencies, State agencies, academic institutions, and private companies, shall advise the Director of the U.S. Geological Survey on planning and implementation of the geologic mapping and data preservation programs.

The Committee will hear updates on progress of the NCGMP toward fulfilling the purposes of the National Geological Mapping Act of 1992; the Federal, State, and education components of the NCGMP; and the National Geological and Geophysical Data Preservation Program.

DATES: June 22–23, 2011, commencing at 8:30 a.m. on June 22 and adjourning by 5 p.m. on June 23.

FOR FURTHER INFORMATION CONTACT: Stephanie Brown, U.S. Geological Survey, Mail Stop 908, National Center, Reston, Virginia 20192, (703) 648–6948.

SUPPLEMENTARY INFORMATION: Meetings of the National Cooperative Geological Mapping Program and National Geological and Geophysical Data Preservation Program Advisory Committee are open to the Public.

Dated: March 29, 2011.

Kevin T. Gallagher,

Associate Director for Core Science Systems.

[FR Doc. 2011–8400 Filed 4–7–11; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement for the Proposed Pueblo of Jemez 70.277-Acre Fee-to-Trust Transfer and Casino Project, Doña Ana County, NM

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), as lead agency, in cooperation with the Pueblo of Jemez, intends to file a Draft Environmental Impact Statement (DEIS) with the U.S. Environmental Protection Agency (EPA) for the proposed approval of a 70.277 acre fee-to-trust transfer and casino project to be located within Doña Ana County, New Mexico. Details on the proposed action, location, and areas of environmental concern addressed in the DEIS are provided in the **SUPPLEMENTARY INFORMATION** section of this notice. This notice also announces a public hearing to receive comments on the DEIS.

DATES: Written comments on the DEIS must arrive by May 23, 2011. The public hearing on the DEIS will be held on Saturday, April 30, 2011, from 10 a.m. to 2 p.m., or until the last public comment is received.

ADDRESSES: You may mail or hand-carry written comments to William Walker, Regional Director, Bureau of Indian Affairs, Southwest Regional Office, 1001 Indian School Road, NW., Albuquerque, New Mexico 87104. The public hearing will be held at the Loma Linda Elementary School, 1451 Donaldson Avenue, Anthony, New Mexico 88021. *See* the **SUPPLEMENTARY INFORMATION** section of this notice for locations where the DEIS is available for review and for directions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Priscilla Wade (505) 563–3417.

SUPPLEMENTARY INFORMATION: The Pueblo of Jemez proposes that 70.277 acres, within a 102.13-acre tract of land, be taken into trust and that a temporary and a permanent casino be constructed on these trust lands. In addition, a hotel is proposed for construction on the 31.855-acres remaining in fee status. The proposed site is located on the southwest corner of Interstate 10 and New Mexico State Road 404 (O'Hara Road), adjacent to the City of Anthony in Doña Ana County, New Mexico. The Pueblo of Jemez, through its Tribal Gaming Enterprise, will operate the casino facility. The BIA is the lead agency for the DEIS on this project. There are no cooperating agencies. A public scoping meeting for the DEIS was held by the BIA on March 16, 2005, in Anthony, New Mexico.

The Pueblo proposes to build and operate a 24,000-square foot temporary casino while building a permanent gaming facility with a planned 103,500 total square feet on trust-acquired land that is adjacent to a proposed 90,000 square-foot hotel facility located on fee land. Access to the facilities would be from O'Hara Road and the west frontage road along I–10. The temporary and permanent casinos and hotel would include associated parking.

Environmental issues addressed in the DEIS include land and water resources, air quality, biological resources, cultural resources, socio-economic conditions, resource use patterns, public services, noise, hazardous materials, visual resources, environmental justice, growth-inducing effects, cumulative impacts, and unavoidable adverse effects. Alternatives to the proposed project considered in the DEIS include: (1) Trust Acquisition with temporary and permanent casino, and hotel construction; (2) Trust Acquisition with permanent casino and hotel construction; and (3) No Action.

Directions for Submitting Comments: Please include your name, return address and the caption, "DEIS Comments, Pueblo of Jemez Proposed 70.277-acre Fee-to-Trust Transfer and Casino Project" on the first page of your written comments.

Locations where the DEIS is Available for Review: The DEIS is available for review at the following locations.

Location	Address	For information on the location, call:
City of Anthony City Hall	320 Lincoln Street, Anthony, New Mexico 88021.	(575) 882–2983.
Pueblo of Jemez Administrative Office	4471 Highway 4, Pueblo of Jemez, New Mexico 87024.	(575) 834–7359 (contact: Ashley Chinana).
BIA Southwest Regional Office	1001 Indian School Road, NW., Albuquerque, New Mexico 87104.	(505) 563–3417.

The DEIS is also available for public review on the following Web sites:

- *http://www.anthonycasinofacts.com,* and
- *http://www.jemezpueblo.org.*

If you would like to obtain a CD copy of the DEIS, please write or call Priscilla Wade, Regional Environmental Protection Specialist, Bureau of Indian Affairs, Division of Environmental, Safety, and Cultural Resources Management, Southwest Regional Office, 1001 Indian School Road, NW., Albuquerque, New Mexico 87104.

Public Comment Availability: Comments, including names and addresses of respondents, will be available for public review at the BIA mailing address shown in the **ADDRESSES** section of this notice, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: This notice is published pursuant to Sec. 1503.1 of the Council of Environmental Quality Regulations (40 CFR part 1500 through 1508) and Sec. 46.305 of the Department of Interior Regulations (43 CFR part 46), implementing the procedural requirements of the NEPA of 1969, as amended (42 U.S.C. 4371 *et seq.*), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: March 25, 2011.

Jodi Gillette,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2011–8035 Filed 4–7–11; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDT01000. L51010000. FX0000. LVRWD09D0500]

Notice of Availability of the Draft Environmental Impact Statement and Draft Resource Management Plan Amendment to the 1987 Jarbidge Resource Management Plan for the Proposed China Mountain Wind Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (EIS) and a Draft Resource Management Plan (RMP) Amendment for the Proposed China Mountain Wind Project in south central Idaho and northeast Nevada and by this notice is announcing the opening of the comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft EIS and Draft RMP Amendment within 90 days following the date the Environmental Protection Agency publishes its notice of the availability of these documents in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Proposed China Mountain Wind Project by any of the following methods:

- *Web site: http://www.blm.gov/id/st/en/prog/planning/china_mountain_wind.html.*
- *E-mail: id_chinamtn_eis@blm.gov.*
- *Fax:* (208) 735–2076.
- *Mail:* China Mountain Wind Project Manager, Jarbidge Field Office, 2536 Kimberly Road, Twin Falls, Idaho 83301.

Copies of the Proposed China Mountain Wind Project Draft EIS and Draft RMP Amendment are available in the Jarbidge Field Office at the above address or electronically on the Web site shown above.

Copies of the Draft EIS and Draft RMP Amendment are available for public inspection during normal business hours at the following locations:

- Bureau of Land Management, Idaho State Office, Public Room, 1387 South Vinnell Way, Boise, Idaho 83709;
- Bureau of Land Management, Jarbidge Field Office, 2536 Kimberly Road, Twin Falls, Idaho 83301;
- Bureau of Land Management, Nevada State Office, Public Room, 1340 Financial Boulevard, Reno, Nevada 89502; and
- Bureau of Land Management, Wells Field Office, 3900 E. Idaho Street, Elko, Nevada 89801.

FOR FURTHER INFORMATION CONTACT: China Mountain Wind Project Manager, Jarbidge Field Office, 2536 Kimberly Road, Twin Falls, Idaho 83301, telephone (208) 735–2072. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: China Mountain Wind, LLC (CMW), which is owned by RES America Developments, Inc. (RES) and Nevada Power Company (NV Energy), is proposing to construct, operate, and maintain a commercial wind power electric generation facility capable of generating up to 425 megawatts (MW) of electricity. Up to 170 wind turbines, each having a generating capacity between 2.3 and 3.0 MW, would be installed on an area covering approximately 30,700 acres in the Jarbidge Foothills, an area located southwest of Rogerson, Idaho, and west of Jackpot, Nevada. The proposed project area includes 4,700 acres of public land administered by the BLM Elko District, Wells Field Office, in northeastern Nevada, 15,300 acres of public land administered by the BLM Twin Falls District, Jarbidge Field Office, in south central Idaho, 2,000 acres of State of Idaho lands, and 8,700 acres of private lands in south central Idaho and northeast Nevada.

The proposal involves the issuance of a BLM right-of-way (ROW) grant for the facilities located on public lands. CMW's application for a ROW grant from the BLM for this project triggered the preparation of an EIS under NEPA. The BLM is responsible for evaluating the ROW grant across Federally managed lands by authority of FLPMA. The Draft EIS has been developed to meet the standards for analysis required for compliance with Federal regulations, and the Idaho State BLM has been designated as the review lead. Through internal and external scoping, the BLM has identified the following issues for analysis: Fish and wildlife including special status species, cultural resources, visual resources, air quality, soils, vegetation, noise, water quality, public access; recreation, wildfire management, hazardous materials, social values, and wilderness characteristics. A ROW grant for the proposed action is in conformance with the 1985 Wells RMP. It is not in conformance with the 1987 Jarbidge RMP provisions regarding Visual Resource Management (VRM) classes, protection of threatened, endangered,

and sensitive species, protection of various wildlife and plant resources, and protection of water resources, wetland, and riparian habitats.

Amendments to the 1987 Jarbidge RMP would be required if a decision is made to approve seven of the nine alternatives identified in the Draft EIS. Currently, the 1987 Jarbidge RMP is undergoing a separate revision process. A Draft Jarbidge RMP/EIS for that revision was made available to the public on September 3, 2010, for a 90-day comment period. On October 22, 2010, the Idaho State Director extended the comment period for 60 days. The extended comment period closed January 31, 2011. If the Jarbidge RMP revision is adopted prior to a decision on the China Mountain Wind Project, the project proposal may need to be analyzed against the landscape-scale decisions made in that document.

Nine alternatives are analyzed in this Draft EIS/Draft RMP Amendment. These alternatives were developed in response to issues and concerns raised during the NEPA scoping period that took place from April 21, 2008 to July 21, 2008 and involved three public meetings that took place in Twin Falls, Idaho, and Elko, and Jackpot, Nevada. Public and agency concerns include potential impacts to sensitive species and their habitats, cultural resources, visual resources, public access, and socio-economic resources.

- Alternative A, the No Action Alternative, reflects existing RMP decisions and would result in denying the ROW application.
- Alternative B1 is the applicant's proposed action as submitted in its ROW application and associated plan of development. This alternative would require amendments to the 1987 Jarbidge RMP: To change the VRM Class in certain parts of the proposed project area from II and III to IV; to remove stipulations, in the proposed project area only, regarding sensitive animal species and crucial habitats that specify seasonal occupancy restrictions for various sensitive species; to modify a stipulation that protects threatened, endangered, and sensitive plant species from disturbance related to construction activities such that it would no longer include sensitive plant species in the proposed project area; and to remove a stipulation, in the proposed project area only, that would preclude project facilities within 500 feet of streams.
- Alternative B2 is a two-phase alternative with three different iterations of Phase I, B2a, B2b, and B2c, which are based on the applicant's proposal and the avoidance of various wildlife habitats. A phased approach would allow the BLM to monitor the impacts of Phase I on wildlife prior to constructing the entire project. Phasing would allow the BLM to monitor and confirm that impacts are as predicted in the impact analysis. Under this alternative, monitoring results would be used to determine whether unanticipated impacts occurred as a result of Phase I. If unanticipated impacts occur, the BLM would conduct appropriate NEPA analysis and adjust requirements prior to issuing a notice to proceed to construct Phase II. Alternative B2a would require amendments to the 1987 Jarbidge RMP as described under Alternative B1 above. Alternatives B2b and B2c would require amendments to the 1987 Jarbidge RMP as described under Alternative B1 for VRM and sensitive plants. In addition, an amendment to the stipulations regarding sensitive animal species, crucial habitats, and water resources that would allow exemptions to the restrictions in the stipulations during construction, operation, and decommissioning of the proposed project on a case-by-case basis subject to certain conditions would be required. This amendment would also remove these same restrictions as they apply to routine daily maintenance only.
- Alternative C is a modification of the applicant's proposed action which seeks to reduce impacts to sage-grouse and bats by not constructing turbines in areas within 2 miles of sage-grouse leks and a high bat use area. This alternative would require amendments to the 1987 Jarbidge RMP as described above for Alternatives B2b and B2c.
- Alternative D is a modified version of Alternative C which seeks to further reduce impacts to sage-grouse by eliminating turbine construction in an area of known sage-grouse movements. This alternative would require amendments to the 1987 Jarbidge RMP as described above for Alternatives B2b and B2c.
- Alternative E would be a modification of the applicant's proposed action which would comply with all RMP decisions from the 1987 Jarbidge RMP and the 1985 Wells RMP by eliminating turbines from areas within 2 miles of sage-grouse leks, eliminating turbines from areas of VRM Class II, precluding construction and maintenance activities during times seasonally restricted for various wildlife resources, and eliminating project facilities within 500 feet of streams.
- Alternative F is a modification of the applicant's proposed action which seeks to reduce impacts to cultural resources by eliminating turbine placement in areas with high concentrations of cultural resources and areas of known Native American religious significance. This alternative would require amendments to the 1987 Jarbidge RMP as described above for alternatives B2b and B2c.

In addition, 11 alternatives were considered in the Draft EIS but eliminated from detailed study. These alternatives did not meet the purpose and need of the proposed action. The BLM has not identified a preferred alternative for the project as one does not exist. A preferred project alternative will be identified in the Final EIS per Council on Environmental Quality requirements. The BLM has identified Alternatives B2b, B2c, C, D, and F, which would require amendments to the 1987 Jarbidge RMP, as the preferred planning alternatives, as required by 43 CFR 1610.4–7.

The BLM will use and coordinate the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470(f) as provided for in 36 CFR 800.2(d)(3)). Native American Tribal consultations will be conducted in accordance with policy, and Tribal concerns will be given due consideration, including impacts on Indian trust assets.

Following the public comment period, comments will be used to prepare the Proposed RMP Amendment and Final EIS. The BLM will respond to each substantive comment by making appropriate revisions to the document or by explaining why a comment did not warrant a change. A Notice of Availability of the Proposed RMP Plan Amendment/Final EIS will be published in the **Federal Register**.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 1506.10 and 43 CFR 1610.2.

Richard VanderVoet,

Jarbidge Field Office Manager.

[FR Doc. 2011–8327 Filed 4–7–11; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–65891, LLORB00000–L51010000–GN0000–LVRWH09H0560; HAG–11–0038]

Notice of Availability of the Draft Environmental Impact Statement for the Celatom Mine Expansion Project in Harney and Malheur Counties, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (EIS) for the proposed Celatom Mine Expansion Project and by this notice is announcing the opening of the comment period.

DATES: To ensure comments will be considered, the BLM must receive written comments on the Draft EIS within 45 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Celatom Mine Expansion Project by any of the following methods:

- *E-mail: OREPCME@blm.gov;*
- *Mail:* Celatom Mine Expansion Project Lead, BLM Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738;
- *Fax:* (541) 573–4411, Attention Celatom Mine Expansion Project Lead; or
- Written comments may also be hand-delivered to the BLM Burns District Office at the address shown above.

Copies of the Draft EIS are available at the Burns District Office at the address listed above and electronically at the following Web site: *http://www.blm.gov/or/districts/burns/plans/index.php.*

FOR FURTHER INFORMATION CONTACT: For further information contact William Dragt, Celatom Mine Expansion Project Lead, telephone (541) 573–448–4400; address 28910 Highway 20 West, Hines, Oregon 97738; or e-mail *OREPCME@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: EP Minerals (EPM), formally known as EaglePicher Minerals, operates a diatomaceous earth mine complex (Celatom Mine Complex), approximately 50 miles east of Burns and 60 miles west of Vale, Oregon. The Celatom Mine Complex currently consists of three open-pit mines: Kelley Field (on BLM-administered land), Section 36 (on State land), and Beede Desert (on private land) in Harney and Malheur Counties, Oregon.

Existing EPM mining operations on BLM-administered land in the Project Area were described in a Mine Plan of Operations (MPO) submitted by EPM to the BLM in 1984.

The total MPO area was 1,634 acres. The BLM approved the MPO after completion of an Environmental Assessment in 1985 (BLM 1985). Existing EPM stockpile operations on 35 acres of BLM-administered land at the Vines Hill Stockpile Area (VHSA) approximately 14 miles west of Vale, Oregon, were described in an MPO submitted by EPM and approved by the Vale District BLM in 1986 (BLM 1986). Existing EPM mining operations on private and State land in the Project Area and EPM mill operations on private land approximately 7 miles west of Vale operate under county and State permits. During preparation of this EIS, EPM is authorized to continue operations within the Project Area on BLM-administered land as approved by BLM in 1985, at the VHSA as approved by BLM in 1986, and on private and State lands permitted by county and State agencies.

In 2008, EPM submitted an MPO to the BLM for 12,640 acres. The MPO area includes expanded mining operations on 1,131 acres of BLM administered lands which would be disturbed for decades plus exploration and sampling on 250 acres which would be disturbed for several years and then reclaimed. The remaining 11,259 acres in the MPO area lies between the mines. This area will be largely undisturbed by mining activities except for 5 acres for a new connector road and 250 acres to be used for exploration and sampling. Except for safety considerations, this area also remains open to BLM's multiple uses. Due to the size of the proposed operations, the BLM determined preparation of an EIS is necessary to comply with the requirements of the NEPA. The Draft EIS analyzes proposed activities on BLM-administered land and cumulative effects from proposed activities on State-administered and private land, all within the project boundary. This Draft EIS would analyze EPM's proposed MPO as well as changes or conditions necessary to meet the performance standards of 43 Code of Federal Regulations (CFR) 3809.420 to prevent unnecessary or undue degradation. The proposed operations associated with the project include:

(1) Expanding operations: At the Kelly Field area, expand mining operations to 72.5 acres of BLM-administered land; in Section 36, expand mining operations on State-administered land; at Beede Desert, construct two new roads to connect Hidden Valley and Section 36 and establish access from Hidden Valley north to Eagle; and, at Puma claims, expand operations on private land to 5 acres.

(2) Developing new mining operations on BLM-administered land on 225 acres at Hidden Valley, 462.5 acres in North Kelly Field, 50 acres in Section 25, and 286 acres in Eagle.

(3) Exploratory drilling on 200 acres of BLM-administered land, as well as development drilling, sampling, trenching, and bulk sampling on 50 acres of BLM-administered land within the project boundary. Exploration and subsequent trenching and bulk sampling would be conducted to delineate boundaries of known ore reserves and to explore for new deposits. These activities could occur on BLM-administered lands anywhere within the Project Area. Activities under the Proposed Action, including final reclamation, would be conducted over the course of approximately 50 years. EPM proposes no changes to the permitted operations at VHSA.

The proposed types of expansion of mining operations and development of new mining operations in the Project Area include open pit mines, roads within the mine operations areas, and other operations such as stock piling and ancillary features such as service areas.

A Notice of Intent to Prepare an EIS for the Celatom Mine Expansion Project was published in the **Federal Register** on September 15, 2008 (73 FR 53268). Public participation was solicited through the media, mailings, and the BLM Web site. Public meetings were held in Burns and Vale, Oregon, in October 2008. Major issues brought forward during the public scoping process and addressed in the Draft EIS include: Air Quality; Forestry and Woodlands; Geology and Minerals; Grazing Management; Land Use and Realty; Migratory Birds; Noise;

Recreation; Social and Economic Values; Soils; Special Status Species; Transportation and Roads; Vegetation; Visual Resources; Water Quality; Wetlands and Riparian Zones; Wilderness Characteristics; and Wildlife and Fisheries.

Please note that public comments and information submitted including names, street addresses and e-mail addresses of respondents will be available for public review and disclosure at the above BLM address during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6 and 1506.10.

Kenny McDaniel,

District Manager, Burns.

[FR Doc. 2011–8333 Filed 4–7–11; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV952000 L14200000.BJ0000 241A; 11–08807; MO#4500020668; TAS: 14X1109]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

DATES: *Effective Dates:* Filing is effective at 10 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: David D. Morlan, Chief, Branch of Geographic Sciences, Bureau of Land Management, Nevada State Office, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520, 775–861–6541. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

1. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on April 8, 2010:

The plat, representing the dependent resurvey of a portion of the west boundary and the subdivision of section 31, and a metes-and-bounds survey in section 31, Township 17 North, Range 64 East, Mount Diablo Meridian, Nevada, under Group No. 886, was accepted April 6, 2010. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

2. The Plats of Survey of the following described lands were officially filed at the Nevada State Office, Reno, Nevada on April 15, 2010:

The plat, in two (2) sheets, representing the dependent resurvey of the Fourth Standard Parallel North through a portion of Range 63 East, a portion of the west boundary and a portion of the subdivisional lines, the subdivision of sections 6 and 7, and metes-and-bounds surveys of portions of the easterly and westerly right-of-way lines of the Nevada Northern Railway, Township 20 North, Range 64 East, Mount Diablo Meridian, Nevada, under Group No. 857, was accepted on April 13, 2010.

The plat, in five (5) sheets, representing the dependent resurvey of portions of the east and north boundaries and a portion of the subdivisional lines, the subdivision of sections 12, 25 and 36, and metes-and-bounds surveys of portions of the easterly and westerly right-of-way lines of the Nevada Northern Railway, Township 21 North, Range 63 East, Mount Diablo Meridian, Nevada, under Group No. 857, was accepted on April 13, 2010. These surveys were executed to meet certain administrative needs of the Bureau of Land Management.

3. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on April 29, 2010:

The plat, in five (5) sheets, representing the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, the subdivision of section 11, and metes-and-bounds surveys of portions of the easterly and westerly right-of-way lines of the Nevada Northern Railway, Township 22 North, Range 63 East, Mount Diablo Meridian, Nevada, under Group No. 867, was accepted on April 27, 2010. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

4. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on September 1, 2010:

The plat, in two (2) sheets, representing the dependent resurvey of portions of the south and west boundaries, a portion of the subdivisional lines and a portion of the subdivision-of-section lines of sections 30 and 33, and the further subdivision of sections 30 and 33, Township 15 North, Range 20 East, Mount Diablo Meridian, Nevada, under Group No. 874, was accepted August 31, 2010. This survey was executed to meet certain administrative needs of the U.S. Forest Service.

5. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on September 30, 2010:

The plat, in five (5) sheets, representing the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, metes-and-bounds surveys of the easterly and westerly right-of-way lines of the Nevada Northern Railway and metes-and-bounds survey of portions of the Cherry Creek Station Grounds, Township 23 North, Range 63 East, Mount Diablo Meridian, Nevada, under Group No. 869, was accepted September 29, 2010. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

6. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on January 7, 2011:

The plat, representing the dependent resurvey of the Second Standard Parallel South, through portions of Ranges 61 and 62 East; and a dependent resurvey of a portion of the east boundary of Township 9 South, Range 61 East; and the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 4, 5 and 6, Township 9 South, Range 62 East, Mount Diablo Meridian, Nevada, under Group No. 877, was accepted on January 6, 2011. This survey was executed to meet certain administrative needs of the U.S. Fish and Wildlife Service.

7. The Plats of Survey of the following described lands were officially filed at the Nevada State Office, Reno, Nevada on February 4, 2011:

The plat, in four (4) sheets, representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, and metes-and-bounds surveys of the easterly and westerly right-of-way lines of the Nevada Northern Railway, Township 24 North, Range 63 East, Mount Diablo Meridian, Nevada, under Group No. 880, was accepted on January 21, 2011.

The plat, in three (3) sheets, representing the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, the subdivision of section 7, and metes-and-bounds surveys of portions of the easterly and westerly right-of-way lines of the Nevada Northern Railway, Township 24 North, Range 64 East, Mount Diablo Meridian, Nevada, under Group No. 880, was accepted on January 21, 2011. These surveys were executed to meet certain administrative needs of the Bureau of Land Management.

The plat, representing the dependent resurvey of portions of the east and north boundaries of Township 18 South, Range 59 East, Mount Diablo Meridian, Nevada, under Group No. 881, was accepted on January 21, 2011.

The plat, representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, and the subdivision of sections 25, 26 and 27, Township 18 South, Range 60 East, Mount Diablo Meridian, Nevada, under Group No. 881, was accepted on January 21, 2011.

The plat, representing the entire survey record of the dependent resurvey of a portion of the south boundary of Township 18 South, Range 62 East, Mount Diablo Meridian, Nevada, under Group No. 882, was accepted on January 21, 2011. These surveys were executed to meet certain administrative needs of the U.S. Fish and Wildlife Service.

The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the Bureau of Land Management, Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: April 4, 2011.

David D. Morlan,

Chief Cadastral Surveyor, Nevada.

[FR Doc. 2011–8420 Filed 4–7–11; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–308–310 and 520–521 (Third Review)]

Carbon Steel Butt-Weld Pipe Fittings From Brazil, China, Japan, Taiwan, and Thailand

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty orders on carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on October 1, 2010 (75 F.R. 60814) and determined on January 4, 2011 that it would conduct expedited reviews (76 FR 5205).

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on April 4, 2011. The views of the Commission are contained in USITC Publication 4222 (April 2011), entitled *Carbon Steel Butt-Weld Pipe Fittings from Brazil, China, Japan, Taiwan, and Thailand: Investigation Nos. 731–TA–308–310 and 520–521 (Third Review).*

By order of the Commission.

Issued: April 4, 2011.

James Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–8354 Filed 4–7–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Telemanagement Forum

Notice is hereby given that, on February 15, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Telemanagement Forum ("The Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 6fusion USA, Inc., Durham, NC; Abiba Systems Private Limited, Bangalore, Karnataka, INDIA; AdvOSS, Richmond, British Columbia, CANADA; Aircel Limited, Gurgaon, Haryana, INDIA; AIST ISP, Togliatti, RUSSIA; angel.com, Mclean, VA; Aperium P/L, Melbourne, Victoria, AUSTRALIA; Asis Technology Partners S.A.C., Lima, PERU; AssuringBusiness Pte Ltd, Singapore, SINGAPORE; Atoll Solution Ltd., Urom, HUNGARY; Axial Sp. Z.o.o., Warszawa, POLAND; Axis Convergence Private Limited, Noida, Uttar Pradesh, INDIA; Birdstep Technology, Espoo, FINLAND; Bonsai Network India Pvt Ltd, Kolkata, West Bengal, INDIA; Business Logic Systems, Belper, Derbyshire, UNITED KINGDOM; Cariden Technologies Inc., Mountain View, CA; Carrywater Consulting z.o.o., Warszawa, POLAND; Charter Communications, St. Louis, MO; Clarebourne Consultancy Ltd, Farnham, Surrey, UNITED KINGDOM; Consultancy & Systems Engineering (c & se), Herrsching a. Ammersee, GERMANY; Cycle 30, Seattle, WA; Dassault Systemes Enovia Corp., Lowell, MA; DataProbity, Stuart, FL; Dextra Technologies, Monterrey, Nuevo Leon, MEXICO; EA Principles, Inc., Alexandria, VA; Edge Strategies Inc., Wayland, MA; ESRI, Redlands, CA; FARICE, Kopavogur, ICELAND; Friedhelm, Fink Kiel, GERMANY; Graphene, Palm Coast, FL; GVT Curitiba, Parana, BRAZIL; HughesTelematics, Inc., Atlanta, GA; Inducta d.o.o., Zagreb, CROATIA; Infinite Infosoft Services Pvt Ltd, Gurgaon, INDIA; ING Bank N.V., Amsterdam, NETHERLANDS; integracija od-do d.o.o., Zagreb, CROATIA; Intraway Corp Capital Federal, Buenos Aires, ARGENTINA; Intune Networks, Dublin, IRELAND; ISP Alliance, Inc. DBA ZCorum, Alpharetta, GA; Joyent, San Francisco, CA; KPN International, Dusseldorf, GERMANY; Leonid Systems, Washington, DC; LG CNS India Pvt Ltd, Bangalore, Karnataka, INDIA; Marcus Aurelius, Moscow, RUSSIA; Meditelecom, Casablanca, MOROCCO; MKC, Darmstadt, GERMANY; Model Advisors, West Linn, OR; Monolith Software, St. Charles, IL; NASA JPL, Pasadena, CA; NetBoss Technologies, Inc., Sebastian, FL; Network Critical, LLC, Buffalo, NY; Nimsoft, Campbell, CA; Northop

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Grumman Corporation—(Information Systems, Defense Enterprise Solutions), Mclean, VA; NTG Clarity Networks Inc. Cairo, EGYPT; Open Systems S.A., Quito, ECUADOR; Opencity Media Limited, Newton Le Willows, Merseyside, UNITED KINGDOM; Philippine Long Distance Telephone Company (PLDT), Makati City, PHILIPPINES; PLINTRON Global Technology Solutions Private Limited Chennai, Tamilnadu, INDIA; POWERACT Consulting, Casablanca, MOROCCO; Regent University, Virginia Beach, VA; Sandvine, Waterloo, Ontario, CANADA; SAPO (PT Comunicacoes), Lisbon, PORTUGAL; Seacom ltd Floreal, Floreal, MAURITIUS; SevOne, Inc., Newark, DE; Sidonis Limited, Bath, UNITED KINGDOM; Sitra, Helsinki, FINLAND; Solace Systems, Ottawa, Ontario, CANADA; SpatiaInfo, Inc., Englewood, CO; Sybase, an SAP Company, Dublin, CA; Symbiosis Institute of telecom management, Pune, Maharashtra, INDIA; Tango Telecom Ltd, Limerick, IRELAND; Telconet S.A., Quito, Pichincha, ECUADOR; Telconet S.A., Guayaquil, Guayas, ECUADOR; Telesur, Paramaribo, SURINAME; TeleworX LLC, Reston, VA; The Cloudscaling Group, Inc., San Francisco, CA; TIBCO Software Inc, Palo Alto, CA; T-Mobile Nederland BV, Den Haag, NETHERLANDS; True Corporation Public Company Limited, Bangkok, THAILAND; United Telecommunications Services, Willemstad, Curaco, NETHERLANDS ANTILLES; USC–University of Southern California, Los Angeles, CA; Varaha, Dallas, TX; XINTEC S.A., Munsbach, LUXEMBOURG; and Zimory, Berlin, GERMANY, have been added as parties to this venture.

The following parties have changed their names: Abiba Systems to Abiba Systems Private Limited, Bangalore, Karnataka, INDIA; Sopra India Pvt, Ltd to Aircel Limited., Guragon, Haryana, INDIA; AIST ISP to ZAO 'AIST', Togliatti, RUSSIA; Asis TP SAC to Asis Technology Partners S.A.C., Lima, PERU; Axial to Axial Sp.z.o.o., Warszawa, POLAND; Technology to Birdstep Technology, Espoo, FINLAND; Ushacomm India Pvt. Ltd to Bonsai Network India Pvt Ltd., Kolkata, West Bengal, INDIA; CA to CA Technologies, Inc., Portsmouth, NH; ONO to CABLEUROPA S.A.U.(ONO), Madrid, SPAIN; Cariden Technologies to Cariden Technologies, Inc., Mountain View, CA; Cogent Defence & Security Networks to Cassidian Systems (formerly Cogent Defence and Security System), Newport, South Wales, UNITED KINGDOM; Celcom (Malaysia) Sdh Bhd to Celcom Axiata Berhad, Kuala Lumpur, MALAYSIA; Enovia to Dessault Systemes Enovia Corp., Lowell, MA; Dialog Telkom PLC to Dialog Axiata PLC, Colombo, SRI LANKA; A Principals, Inc. to EA Principals, Inc., Alexandria, VA; ri to ESRI, Redlands, CA; Global Village Telecom to GVT; Hello Axiata Company Limited to Hello Axiata Company Ltd., Khan Chamkarmon, Phnom Penh, CAMBODIA; HughesTelematics to HughesTelematics, Inc., Atlanta, GA; Inducta to Inducta d.o.o., Zagreb, CROATIA; Infinite Computer Solutions to Infinite Infosoft Services Pvt, Ltd, Guragon, INDIA; ING to ING Bank N.V., Amsterdam, NETHERLANDS; KPN Group Belgium to KPN International, Dusseldorf, GERMANY; Laboratory for Telecomm-Faculty of Elect. Eng. to Laboratory for Telecomm-Faculty of Elect. Eng. University of Ljubljana, Ljubljana, SLOVENIA; Leonid Consulting to Leonid Systems, Washington, DC; Network Critical to Network Critical, LLC, Buffalo, NY; imsoft to Nimsoft, Campbell, CA; Northrop Grumman to North Grumman Corporation–(Information Systems, Defense Enterprise Solutions), McLean, VA; IPDR Technologies, LLC to OpenVault., Golden, CO; Corrigent Systems to Orckit-Corrigent, Tel-Aviv, IS, ISRAEL; Pakistan Telecommunication Company Limited to Pakistan Telecommunication Company Limited PTCL, Islamabad, PAKISTAN; PT Excelcomindo Pratama, Tbk to PT XL Axiata Tbk., Bandung, INDONESIA; SMI Technologies to Quindell Enterprise Solutions, Wickham, Fareham, UNITED KINGDOM; SAPO to SAPO (PT Comunicacoes), Lisbon, PORTUGAL; Sevone to SevOne, Inc., Newark, DE; Smart Communications to SMART COMMUNICATIONS, INC., Makati City, NCR, PHILIPPINES; ybase, an SAP Company to Sybase, an SAP Company, Dublin, CA; Telconet to Telconet S.A., Guayaquil, Guayas, ECUADOR; Cloudscaling to The Cloudscaling Group, Inc., San Francisco, CA; TIBCO Software to TIBCO Software Inc, Palo Alto, CA; True Corporation to True Corporation Public Company Limited, Bangkok, THAILAND; Ultimate Software Group to Ultimate Software, Weston, FL; United telecommunications services to United Telecommunication Services, Willemstad, Curacao, NETHERLANDS ANTILLES; Ventelo Bedrift AS to Ventelo Networks AS, Oslo, NORWAY.

The following parties have withdrawn from this venture: 4STARS Ltd., Zagreb, CROATIA; CAN, Inc., Concord, NC; AIST Limited, Stanmore, Middlesex, UNITED KINGDOM; Analysys Mason, London, UNITED KINGDOM; ARGELA Technologies, Istanbul, N/A, TURKEY; BTG, Driebergen, NETHERLANDS; CBOSS Middle East FZ–LLC, Dubai, UNITED ARAB EMIRATES; Ciminko, Luxembourg, LUXEMBOURG; Cloud Scope Technologies, Inc., Tokyo, JAPAN; Enabling Potential, Inc., Ajax, Ontario, CANADA; Enterprise Designer Institute, Daylesford, Victoria, AUSTRALIA; Everware-CBDI Inc., Fairfax, VA; INTEC Telecom Systems, Minneapolis, MN; INTEC Telecom Systems, Working, Surrey, UNITED KINGDOM; KlassTel, Moscow, RUSSIA; Kulacom, Amman, 11953, JORDAN; LGG Solutions, Colorado Springs, CO; Lightwolf Technologies LLC, Walpole, MA; MAGNA CONSULT, Miami, FL; Nervogrid, Espoo, FINLAND; OKTET Labs Ltd., St. Petersburg, RUSSIA; OpenVision Co., Ltd., Bangkok, Thailand; OT/Partners, Glen Echo, MD; Qualicom Innovations (Asia) Limited, Hong Kong, HONG KONG–CHINA; SARA computing and networking services, Amsterdam, NETHERLANDS; Savvion, Santa Clara, CA; Site of Knowledge Group AB, Lund, SWEDEN; SmartNet, Sao Paulo, BRAZIL; Strata Group Inc., St. Louis, MO; Syntel, Inc., Troy, MI; TailorMade, Sundbyberg, SWEDEN; Telesoft-Russia, Moscow, RUSSIA; Trammell Craig & Associates. Farmington, NM; TTNet A.S. (Turkish Telecom), Sisli/Istanbul, TURKEY; UK Cabinet Office, London, UNITED KINGDOM; Unisys Consulting Spain, Madrid, SPAIN; University of Palermo, Palermo, ITALY; Wiston Wolf-Engenharia e Consultoria Lda., Algés, PORTUGAL.

In addition, the following parties have changed their addresses: Advenis to Linden, BELGIUM; Belgacom, S.A. to Brussels, BELGIUM; Celcom Axiata Berhad to Kuala Lumpur, MALAYSIA; Dialog Axiata PLC to Colombo, SRI LANKA; Hello Axiata Company Ltd. to Khan Chamkarmon, Phnom Penh, CAMBODIA; IPANEMA TECHNOLOGIES to Fontenay aux Roses, FRANCE; ITS Telco Services GmbH to Koln, GERMANY; Objective Systems Integrators to Folsom, CA; Orckit-Corrigent to Tel-Aviv, ISRAEL; PT XL Axiata Tbk. to Jakarta, DKI Jaya 12950, INDONESIA; SevenTest R&D Centre Co. Ltd. to Saint Petersburg, RUSSIA; SMART COMMUNICATIONS, INC. to Makati City, NCR, PHILIPPINES; and Ultimate Software to Weston, FL.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research

project remains open, and The Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, The Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on August 31, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act October 22, 2010 (75 FR 65383).

Patricia A. Brink,

Director of Civil Enforcement Antitrust Division.

[FR Doc. 2011–8365 Filed 4–7–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension of Employee Retirement Income Security Act Class Exemption 77–4 for Certain Transactions Between Investment Companies and Employee Benefit Plans

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, "Employee Retirement Income Security Act Class Exemption 77–4 for Certain Transactions between Investment Companies and Employee Benefit Plans," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before May 9, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/*Fax:* 202–395–6881 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Employee Retirement Income Security Act Class Exemption 77–4 permits an employee benefit plan to purchase and sell shares of an open-end investment company (mutual fund) when a fiduciary with respect to the plan is also the investment advisor for the mutual fund. In order to ensure that the exemption is not abused and that the rights of participants and beneficiaries are protected, the DOL has included in the exemption three basic disclosure requirements. The first requires at the time of the purchase or sale of such mutual fund shares that the independent fiduciary of the plan receive a copy of the current prospectus issued by the open-end mutual fund and a full and detailed written statement of the investment advisory fees charged to or paid by the plan and the open-end mutual fund to the investment advisor. The second requires that the independent fiduciary approve in writing such purchases and sales. The third requires that the independent fiduciary, once notified of changes in the fees, re-approve in writing the purchase and sale of mutual fund shares.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1210–0049. The current OMB approval is scheduled to expire on April 30, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on November 10, 2010 (75 FR 69131).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to ensure appropriate consideration, comments should reference OMB Control Number 1210–0049. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employee Benefits Security Administration (EBSA).

Title of Collection: Employee Retirement Income Security Act Class Exemption 77–4 for Certain Transactions between Investment Companies and Employee Benefit Plans.

OMB Control Number: 1210–0049.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 700.

Total Estimated Number of Responses: 366,000.

Total Estimated Annual Burden Hours: 31,350.

Total Estimated Annual Costs Burden: $442,000.

Dated: April 4, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–8363 Filed 4–7–11; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension of Employee Retirement Income Security Act Class Exemption 81–8 for Investment of Plan Assets in Certain Types of Short-Term Investments

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, "Employee Retirement Income Security Act Class Exemption 81–8 for Investment of Plan Assets in Certain Types of Short-Term Investments," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before May 9, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/*Fax:* 202–395–6881 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Employee Retirement Income Security Act Class Exemption 81–8 permits the investment of plan assets that involve the purchase or other acquisition, holding, sale, exchange or redemption by or on behalf of an employee benefit plan of certain types of short-term investments. The Department has included in the class exemption two basic disclosure requirements. Both affect only the portion of the exemption dealing with repurchase agreements. The first requirement calls for the repurchase agreements between the seller and the plan to be in writing. The repurchase agreements have a duration of one year or less and may be in the form of a blanket agreement that covers the transactions for the year. The written agreement is intended to put the plan on notice of possible fees associated with the redemption of open-end mutual fund shares. The second requirement obliges the seller of such repurchase agreements to provide the most recent financial statements to the plan at the time of the sale and as the statements are issued. The seller must also represent, either in the repurchase agreement or prior to each repurchase agreement transaction, that as of the time the transaction is negotiated, there has been no material adverse change in the seller's financial condition since the date the most recent financial statement was furnished that has not been disclosed to the plan fiduciary with whom the written agreement is made.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1210–0061. The current OMB approval is scheduled to expire on April 30, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on November 10, 2010 (75 FR 69130).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to ensure appropriate consideration, comments should reference OMB Control Number 1210–0061. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employee Benefits Security Administration (EBSA).

Title of Collection: Employee Retirement Income Security Act Class Exemption 81–8 for Investment of Plan Assets in Certain Types of Short-Term Investments.

OMB Control Number: 1210–0061.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 61,000.

Total Estimated Number of Responses: 305,000.

Total Estimated Annual Burden Hours: 76,000.

Total Estimated Annual Costs Burden: $87,000.

Dated: April 4, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–8385 Filed 4–7–11; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension of Employee Retirement Income Security Act Prohibited Transaction Class Exemption 96–62, Process for Expedited Approval of an Exemption for Prohibited Transaction

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, "Employee Retirement Income Security

Act Prohibited Transaction Class Exemption 96–62, Process for Expedited Approval of an Exemption for Prohibited Transaction," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before May 9, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Prohibited Transaction Class Exemption 96–62 provides for accelerated approval of an exemption permitting a plan to engage in a transaction which might otherwise be prohibited following a demonstration to the DOL that the transaction: (1) Is substantially similar in all material respects to at least two other transactions for which the DOL recently granted administrative relief from the same restriction; and (2) presents little, if any, opportunity for abuse or risk of loss to a plan's participants and beneficiaries. Under the class exemption, a party may proceed with a transaction in as little as 78 days from the acknowledgment of receipt by the DOL of a written submission filed in accordance with the terms of the class exemption.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1210–0098. The current OMB approval is scheduled to expire on April 30, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on November 10, 2010 (75 FR 69130).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to ensure appropriate consideration, comments should reference OMB Control Number 1210–0098. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employee Benefits Security Administration (EBSA).

Title of Collection: Employee Retirement Income Security Act Prohibited Transaction Class Exemption 96–62, Process for Expedited Approval of an Exemption for Prohibited Transaction.

OMB Control Number: 1210–0098.

Affected Public: Private sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 33.

Total Estimated Number of Responses: 15,279.

Total Estimated Annual Burden Hours: 295.

Total Estimated Annual Costs Burden: $51,000.

Dated: April 5, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–8434 Filed 4–7–11; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Notice of Intent To Award—Grant Awards for the Provision of Civil Legal Services to Eligible Clients in Louisiana (Service Area LA–1) Beginning June 2011

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to make FY 2011 Competitive Grant Awards.

SUMMARY: The Legal Services Corporation (LSC) hereby announces its intention to award grants and contracts to provide economical and effective delivery of high quality civil legal services to eligible clients in Louisiana (service area LA–1) beginning June 2011. Service area LA–1 comprises the following Louisiana parishes: Ascension Parish, Assumption Parish, East Baton Rouge Parish, East Feliciana Parish, Iberville Parish, Lafourche Parish, Pointe Coupee Parish, St. James Parish, St. John the Baptist Parish, Terrebonne Parish, West Baton Rouge Parish, and West Feliciana Parish.

DATES: All comments and recommendations must be received on or before the close of business on May 9, 2011.

ADDRESSES: Legal Services Corporation—Competitive Grants, Legal Services Corporation; 3333 K Street, NW., Third Floor; Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Reginald Haley, Office of Program Performance, at (202) 295–1545, or *haleyr@lsc.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to LSC's announcement of funding availability on January 11, 2011 (76 FR 7), LSC intends to award funds to the following organizations to provide civil legal services in the indicated service areas. Amounts are subject to change.

State and service area	Applicant name	Annualized grant amount
Louisiana:		
LA–1	Capital Area Legal Services Corporation, Inc	$1,629,216
LA–1	Southeast Louisiana Legal Services Corporation, Inc	1,629,216

These grants and contracts will be awarded under the authority conferred on LSC by the Legal Services Corporation Act, as amended (42 U.S.C. 2996e(a)(1)). Awards will be made so that each service area is served, although none of the listed organizations are guaranteed an award or contract. This public notice is issued pursuant to the LSC Act (42 U.S.C. 2996f(f)), with a request for comments and recommendations concerning the potential grantees within a period of thirty (30) days from the date of publication of this notice. Grants will become effective and grant funds will be distributed in June 2011.

Dated: March 31, 2011.

Janet LaBella,

Director, Office of Program Performance, Legal Services Corporation.

[FR Doc. 2011–8191 Filed 4–7–11; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (11–031)]

NASA Advisory Council; Technology and Innovation Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Technology and Innovation Committee of the NASA Advisory Council. The meeting will be held for the purpose of reviewing the Space Technology programs and review knowledge management and technology transfer activities within the Office of the Chief Technologist.

DATES: Thursday, April 28, 2011, 8:30 a.m. to 4 p.m., Local Time and Friday, April 29, 2011, 8:30 a.m. to 12:30 p.m., Local Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room MIC–6A (6H45), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Green, Office of the Chief Technologist, NASA Headquarters, Washington, DC 20546, (202) 358–4710, fax (202) 358–4078, or *g.m.green@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Office of the Chief Technologist Update.
—Space Technology Programs Updates.
—Knowledge management and technology transfer and licensing activities update.
—Update on technology and innovation in NASA Commercial and Emerging Space activities.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Mr. Mike Green via e-mail at *g.m.green@nasa.gov* or by telephone at (202) 358–4710.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–8457 Filed 4–7–11; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee #13883; Notice of Meeting via Teleconference

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Astronomy and Astrophysics Advisory Committee (#13883).

Date and Time: May 6, 2011; 12 p.m.–5 p.m. Teleconference.

Place: National Science Foundation, Room 310, Stafford I Building, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. James S. Ulvestad, Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–8820.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

Agenda: To hear presentations of current programming by representatives from NSF, NASA, DOE and other agencies relevant to astronomy and astrophysics; to discuss current and potential areas of cooperation between the agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Dated: April 5, 2011.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 2011–8379 Filed 4–7–11; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Polar Programs; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Polar Programs (1130).

Date/Time: May 18, 2011, 8:30 a.m. to 5:30 p.m. May 19, 2011, 8:30 a.m. to 2 p.m.

Place: National Science Foundation, Room 1235, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Open.

Contact Person: Dr. Kelly Falkner, Office of Polar Programs (OPP). National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8030.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs, and

activities on the polar research community, to provide advice to the Director of OPP on issues related to long-range planning.

Agenda: Staff presentations and discussion on opportunities and challenges for polar research, education and infrastructure; discussion of OPP Strategic Vision development; transformative research, ad hoc proposals & program solicitations.

Dated: April 5, 2011.

Susanne Bolton,

Committee Management Officer.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 030–01179; NRC–2011–0078]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for the University of Alaska-Fairbanks, Fairbanks, AK

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Jack E. Whitten, Chief, Nuclear Materials Safety Branch B, Division of Nuclear Materials Safety, Region IV Office, U.S. Nuclear Regulatory Commission, Arlington, Texas, 76011. Telephone: 817–860–8197; fax number: 817–860–8188; e-mail: *Jack.Whitten@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Material License No. 50–02430–07, issued to the University of Alaska-Fairbanks (the licensee), to authorize the release of an incinerator previously used at the Arctic Health Research Building for unrestricted use and for removal from the license. The NRC has prepared an Environmental Assessment (EA) in support of this amendment in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed amendment is to allow for the release of an incinerator previously used at the Arctic Health Research Building, University of Alaska-Fairbanks, Fairbanks, Alaska, for unrestricted use and removal from the license. The licensee was authorized by the NRC on June 28, 1982, to begin using an incinerator to dispose of radioactive wastes. The licensee has used this incinerator to dispose of biologically hazardous wastes containing low-level radioactive materials. On July 30, 2008, the licensee requested authorization to decommission this incinerator. The licensee stated that it had disposed of wastes containing low levels of hydrogen-3 (tritium) and carbon-14 by incineration. The licensee also disposed of wastes containing phosphorus-32, sulfur-35, and iodine-125 via incinerator after the radioisotopes were allowed to decay in storage. The licensee's submittal included radiological survey results for the incinerator, the area around the incinerator, and accessible areas of the discharge stack. The NRC staff reviewed the licensee's submittal and requested additional information about the proposed decommissioning plan. The licensee responded with additional information by letter dated July 12, 2009. The licensee conducted an historical assessment and concluded that the incinerator had been used for 17 years. The licensee estimated that it had disposed of wastes containing about 19 millicuries (0.7 gigabecquerels) of hydrogen-3 (tritium) and about 13 millicuries (0.47 gigabecquerels) of carbon-14. All other radionuclides that were incinerated had short half-lives (less than 88 days) and were allowed to decay in storage prior to incineration. The licensee included additional survey measurements of the accessible areas of the incinerator in its second submittal. The NRC subsequently approved the decommissioning plan by license amendment dated August 12, 2009. The licensee completed decommissioning and submitted a final status survey report to the NRC by letter dated November 16, 2009. The final status survey report included survey data for the discharge stack, data collected from areas that were inaccessible during previous surveys.

The NRC staff conducted a technical review of the licensee's radiological survey data. The licensee's final status survey results were well below the NRC's screening values for hydrogen-3 and carbon-14 as presented in NUREG–1757, Volume 1, Revision 2, "Consolidated Decommissioning Guidance: Decommissioning Process for Materials Licensees," Table B.1, Acceptable License Termination Screening Values of Common Radionuclides for Building-Surface Contamination." The NRC staff also compared the final status survey results to the equipment release criteria provided in Regulatory Guide 1.86, "Termination of Operating Licenses for Nuclear Reactors," Table 1, Acceptable Surface Contamination Levels. In summary, the licensee conducted radiological surveys of the incinerator and provided sufficient information to the NRC demonstrating that the incinerator meets the license termination criteria specified in Subpart E to 10 CFR Part 20 for unrestricted release of the incinerator. The staff has prepared this EA in support of the proposed license amendment.

This proposed license amendment will allow the licensee to free-release the decommissioned incinerator without any radiological restrictions. In accordance with the current license, the licensee will continue to be authorized to dispose of biologically hazardous wastes containing limited quantities of licensed radioactive material using a different incinerator.

The staff has prepared this EA in support of the proposed license amendment to release the incinerator for unrestricted use. The staff has found that the radiological environmental impacts from the proposed amendment are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities" (NUREG–1496). The staff has also found that the non-radiological impacts are not significant. The staff consulted with the State of Alaska, and the State had no comments on the proposed action.

III. Finding of No Significant Impact

On the basis of this EA, NRC has concluded that there are no significant environmental impacts from the proposed amendment and has determined not to prepare an environmental impact statement.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agency Wide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

1. NRC, "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities,"

NUREG–1496, July 1997 (ML042310492, ML042320379, and ML042330385).
2. Martinson, Tracey A., University of Alaska-Fairbanks, Licensee letter requesting release of incinerator, July 30, 2008 (ML082420967).
3. NRC, Request for additional information, June 4, 2009 (ML091560189).
4. Martinson, Tracey A., University of Alaska-Fairbanks, Proposed decommissioning plan, July 12, 2009 (ML110310647).
5. NRC, License amendment, August 12, 2009 (ML092240357).
6. Martinson, Tracey A., University of Alaska-Fairbanks, Final status survey report, November 16, 2009 (ML093641107).

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Arlington, Texas this 31st day of March 2011.

For the Nuclear Regulatory Commission.

Jack E. Whitten,

Chief, Nuclear Materials Safety Branch B, Division of Nuclear Materials Safety, Region IV.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219; NRC–2010–0320]

Exelon Generation Company, LLC; Oyster Creek Nuclear Generating Station; Exemption

1.0 Background

Exelon Generation Company, LLC (Exelon or the licensee) is the holder of Facility Operating License No. DPR–16 that authorizes operation of the Oyster Creek Nuclear Generating Station (Oyster Creek). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

The facility consists of a boiling-water reactor located in Ocean County, New Jersey.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), part 50, Section 50.48 requires that nuclear power plants that were licensed before January 1, 1979, must satisfy the requirements of 10 CFR part 50, Appendix R, Section III.G, "Fire protection of safe shutdown capability." Oyster Creek was licensed to operate prior to January 1, 1979. As such, the licensee's Fire Protection Program (FPP) must provide the established level of protection as intended by Section III.G of 10 CFR part 50, Appendix R.

By letter dated March 3, 2009, "Request for Exemption from 10 CFR 50, Appendix R, Section III.G, 'Fire Protection of Safe Shutdown Capability (Phase 1)'" available at Agencywide Documents Access and Management System (ADAMS), Accession No. ML090630132, and supplemented by letter dated April 2, 2010, "Response to Request for Additional Information Request for Exemption from 10 CFR 50, Appendix R, Section III.G, 'Fire Protection of Safe Shutdown Capability'" (ML100920370), the licensee requested an exemption for Oyster Creek from certain technical requirements of 10 CFR part 50, Appendix R, Section III.G.2 (III.G.2) for the use of operator manual actions (OMAs) in lieu of meeting the circuit separation and protection requirements contained in III.G.2 for the following 21 plant Fire Areas: CW–FA–14, OB–FA–9, OB–FZ–6A, OB–FZ–6B, OB–FZ–8A, OB–FZ–8B, OB–FZ–8C, OB–FZ–10A, RB–FZ–1D, RB–FZ–1E, RB–FZ–1F3, RB–FZ–1F5, RB–FZ–1G, TB–FA–3A, TB–FA–26, TB–FZ–11B, TB–FZ–11C, TB–FZ–11D, TB–FZ–11E, TB–FZ–11F, and TB–FZ–11H. These 21 plant areas are the subject of this exemption.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when: (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The licensee has stated that special circumstances are present in that the application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule, which is consistent with the language included in 10 CFR 50.12(a)(2)(ii).

In their March 3, 2009, and April 2, 2010, letters, the licensee discussed financial implications associated with plant modifications that may be necessary to comply with the regulation. 10 CFR 50.12(a)2(iii) states that if such costs have been shown to be significantly in excess of those contemplated at the time the regulation was adopted, or are significantly in excess of those incurred by others similarly situated, this may be considered a basis for considering an exemption request. However, financial implications were not considered in the regulatory review of their request since no substantiation was provided regarding such financial implications. Even though no financial substantiation was provided, the licensee did submit sufficient regulatory basis to support a technical review of their exemption request in that the application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

In accordance with 10 CFR 50.48(b), nuclear power plants licensed before January 1, 1979, are required to meet Section III.G of 10 CFR part 50, Appendix R. The underlying purpose of Section III.G of 10 CFR part 50, Appendix R, is to ensure that the ability to achieve and maintain safe shutdown is preserved following a fire event. The regulation intends for licensees to accomplish this by extending the concept of defense-in-depth to:

(1) Prevent fires from starting;

(2) Rapidly detect, control, and extinguish promptly those fires that do occur;

(3) Provide protection for structures, systems, and components important to safety so that a fire that is not promptly extinguished by the fire suppression activities will not prevent the safe shutdown of the plant.

The stated purpose of 10 CFR part 50, Appendix R, Section III.G.2 (III.G.2) is to ensure that one of the redundant trains necessary to achieve and maintain hot shutdown conditions remains free of fire damage in the event of a fire. III.G.2 requires one of the following means to ensure that a redundant train of safe shutdown cables and equipment is free of fire damage, where redundant trains are located in the same fire area outside of primary containment:

a. Separation of cables and equipment by a fire barrier having a 3-hour rating;

b. Separation of cables and equipment by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards and with fire detectors and

an automatic fire suppression system installed in the fire area; or

c. Enclosure of cables and equipment of one redundant train in a fire barrier having a 1-hour rating and with fire detectors and an automatic fire suppression system installed in the fire area.

Exelon has requested an exemption from the requirements of III.G.2 for Oyster Creek to the extent that redundant trains of systems necessary to achieve and maintain hot shutdown are not maintained free of fire damage in accordance with one of the required means prescribed in III.G.2.

Each OMA included in this review consists of a sequence of tasks that occur in various fire areas. The OMAs are initiated upon confirmation of a fire in a particular fire area. Table 1 lists, in the order of the fire area of fire origin, the OMAs included in this review.

TABLE 1

Area of fire origin	Area name	Actions	OMA No.
1 CW–FA–14	Circulatory Water Intake	Manually open valve (V) V–9–2099 and V–11–49 and close V–11–63 and V–11–41.	7
		Manually open V–15–237, throttle V–15–30 using local flow indicator (FI–225–2) and close V–15–52.	12
2 OB–FA–9	Office Building (Bldg.) Elev. 23′-6″, 35′-0″, 46′-6″	Locally read Condensate Storage Tank level at level indicator (LI) LI–424–993 due to damage to control circuits.	2
		Manually open V–15–237, throttle V–15–30 using local flow indicator (FI–225–2) and close V–15–52.	12
3 OB–FZ–6A	Office Bldg. “A” 480V Switchgear (SWGR) Room Elev. 23′-6″.	Locally read condensate storage tank (CST) level at LI–424–993 due to damage to control circuits.	2
		Use Remote Shutdown Panel (RSP) to control equipment: RSP, Control Rod Drive (CRD) Hydraulic Pump NC08B and 480V USS 1B2 Incoming breaker (Operate USS 1B2/CRD Transfer Switch (Partial initiation) to “Alternate” and operate Control Switches for USS–1B2 Main Breaker and B CRD Pump).	9
		Manually open V–15–237, throttle V–15–30 using local flow indicator (FI–225–2) and close V–15–52.	12
4 OB–FZ–6B	Office Bldg. “B” 480V SWGR Room Elev. 23′-6″	Manually open V–9–2099 and V–11–49 and close V–11–63 and V–11–41.	7
		Manually open V–15–237, throttle V–15–30 using local flow indicator (FI) FI–225–2 and close V–15–52.	12
5 OB–FZ–8A	Office Bldg. Reactor Recirculation Motor Generator (MG) Set Room Elev. 23′-6″.	Manually open V–9–2099 and V–11–49 and close V–11–63 and V–11–41.	7
		Manually open V–15–237, throttle V–15–30 using local flow indicator (FI–225–2) and close V–15–52.	12
6 OB–FZ–8B	Office Bldg. Mechanical Equipment Room Elev. 35′-0″	Manually open V–9–2099 and V–11–49 and close V–11–63 and V–11–41.	7
		Manually open V–15–237, throttle V–15–30 using local flow indicator (FI–225–2) and close V–15–52.	12
7 OB–FZ–8C	Office Bldg. A/B Battery Room, Tunnel and Electrical Tray Room Elev. 35′-0″.	Locally read Condensate Storage Tank level at LI–424–993 due to damage to control circuits.	2
		Manually open V–9–2099 and V–11–49 and close V–11–63 and V–11–41.	7
		Use Local Shutdown Panels to control equipment as follows: LSP–1A2, CRD Hydraulic PP NC08A and 480V USS 1A2 Incoming breaker (Operate transfer switch “Alternate” and operate Control Switch for USS–1A2 Main Breaker 1A2M and A CRD Pump).	8
		Manually open V–15–237, throttle V–15–30 using local flow indicator (FI–225–2) and close V–15–52.	12
		Trip all five Reactor Recirculation Pumps (NG01–A, NG01–B, NG01–C, NG01D and NG01E). Also, lockout the 4160V breakers using local switch.	16
8 OB–FZ–10A	Office Bldg. Monitor and Change Room Area and Operations Support Area Elev. 35′-0″ & 46′-6″.	Manually open V–15–237, throttle V–15–30 using local flow indicator (FI–225–2) and close V–15–52.	12
9 RB–FZ–1D	Reactor Bldg. Elev. 51′-3″	Manually open V–15–237, throttle V–15–30 using local flow indicator (FI–225–2) and close V–15–52;.	12
10 RB–FZ–1E	Reactor Building Elev. 23′-6″	Read CRD local flow gauge FI–225–998	11
		Manually open V–15–237, throttle V–15–30 using local flow indicator (FI–225–2) and close V–15–52.	12

TABLE 1—Continued

Area of fire origin	Area name	Actions	OMA No.
11 RB–FZ–1F3 ...	Reactor Bldg. Northwest Corner Elev.-19′-6″	Open Core Spray System II manual valves V–20–1 and V–20–2 and close V–20–4.	13
12 RB–FZ–1F5 ...	Reactor Bldg. Torus Room Elev. -19′-6″	Manually open V–15–237, throttle V–15–30 using local flow indicator (FI–225–2) and close V–15–52.	12
13 RB–FZ–1G	Reactor Bldg. Shutdown Cooling Room Elev. 38′-0″ & 51′-3″.	Read CRD local flow gauge FI–225–998	11
		Manually open V–15–237, throttle V–15–30 using local flow indicator (FI–225–2) and close V–15–52.	12
14 TB–FA–3A	Turbine Bldg. 4160V Emergency SWGR Vault 1C Elev. 23′-6″.	Manually open V–15–237, throttle V–15–30 using local flow indicator (FI–225–2) and close V–15–52.	12
15 TB–FA–26	Turbine Bldg. 125V DC Battery Room C Elev. 23′-6″ ...	Manually trip 4160V 1D Breakers and control USS 1B2 and 1B3 480V Breakers locally at LSP–1D.	1
		Manually control 1B3M Breaker from LSP–1B3	3
		Manually re-close motor control center (MCC) 1B32 Feeder Breaker at USS 1B3.	6
		Manually open V–15–237, throttle V–15–30 using local flow indicator (FI–225–2) and close V–15–52.	12
16 TB–FZ–11B ...	Turbine Bldg. Lube Oil Storage, Purification and Pumping Area Elev. 0′-0″, 27′-0″, and 36′-0″.	Manually trip 4160V 1D Breakers and control USS 1B2 and 1B3 480V Breakers locally at LSP–1D.	1
		Locally read Condensate Storage Tank level at LI–424–993.	2
		Manually control 1B3M Breaker from LSP–1B3	3
		Local Shutdown Panels used to control equipment as follows: LSP–1B32 Condensate Transfer Pump 1–2 (Operate transfer switch to “Alternate” and operate Control Switch for Condensate Transfer Pump 1–2).	4
		Manually re-close MCC 1B32 Feeder Breaker at USS 1B3.	6
		Manually open V–15–237, throttle V–15–30 using local flow indicator (FI–225–2) and close V–15–52.	12
		Trip all five Reactor Recirculation Pumps (NG01–A, NG01–B, NG01–C, NG01D and NG01E). Also, lock-out the 4160V breakers using local switch.	16
17 TB–FZ–11C ...	Turbine Bldg. SWGR Room 1A and 1B Elev. 23′-6″	Manually trip 4160V 1D Breakers and control USS 1B2 and 1B3 480V Breakers locally at LSP–1D.	1
		Manually control 1B3M Breaker from LSP–1B3	3
		Manually re-close MCC 1B32 Feeder Breaker at USS 1B3.	6
		Manually open V–15–237, throttle V–15–30 using local flow indicator (FI–225–2) and close V–15–52.	12
18 TB–FZ–11D ...	Turbine Bldg. Basement Floor South End Elev. 3′-6″	Manually trip 4160V 1D Breakers and control USS 1B2 and 1B3 480V Breakers locally at LSP–1D.	1
		Manually control 1B3M Breaker from LSP–1B3	3
		Local Shutdown Panels are used to control equipment as follows: LSP–DG2, EDG2 and its Switchgear (Operate transfer Switches (3 total) to “Alternate” and operate Control Switch on Diesel Panel to start diesel).	5
		Manually re-close MCC 1B32 Feeder Breaker at USS 1B3.	6
		Manually open V–15–237, throttle V–15–30 using local flow indicator (FI–225–2) and close V–15–52.	12
19 TB–FZ–11E ...	Turbine Bldg. Condenser Bay Area Elev. 0′-0″	Manually trip 4160V 1D Breakers and control USS 1B2 and 1B3 480V Breakers locally at LSP–1D.	1
		Locally read Condensate Storage Tank level at LI–424–993.	2
		Manually control 1B3M Breaker from LSP–1B3	3
		Local Shutdown Panels used to control equipment as follows: LSP–1B32 Condensate Transfer Pump 1–2 (Operate transfer switch to “Alternate” and operate Control Switch for Condensate Transfer Pump 1–2).	4

TABLE 1—Continued

Area of fire origin	Area name	Actions	OMA No.
		Local Shutdown Panels are used to control equipment as follows: LSP–DG2, EDG2 and its Switchgear (Operate transfer Switches (3 total) to "Alternate" and operate Control Switch on Diesel Panel to start diesel).	5
		Manually re-close MCC 1B32 Feeder Breaker at USS 1B3.	6
		Manually open V–15–237, throttle V–15–30 using local flow indicator (FI–225–2) and close V–15–52.	12
		Trip all five Reactor Recirculation Pumps (NG01–A, NG01–B, NG01–C, NG01D and NG01E) Also, lockout the 4160V breakers using the 69 Switch.	16
20 TB–FZ–11F ...	Turbine Bldg. Feedwater Pump Room Elev. 0′-0″ & 3′-6″.	Manually open V–9–2099 and V–11–49 and close V–11–63 and V–11–41.	7
		Manually open V–15–237, throttle V–15–30 using local flow indicator (FI–225–2) and close V–15–52.	12
21 TB–FZ–11H ...	Turbine Bldg. Demineralizer Tank and Steam Jet Air Ejector Area Elev. 3′-6″ & 23′-6″.	Manually open V–9–2099 and V–11–49 and close V–11–63 and V–11–41.	7
		Manually open V–15–237, throttle V–15–30 using local flow indicator (FI–225–2) and close V–15–52.	12

In their submittals, the licensee described elements of their fire protection program that provide their justification that the concept of defense-in-depth that is in place in the above fire areas is consistent with that intended by the regulation. To accomplish this, the licensee utilizes various protective measures to accomplish the concept of defense-in-depth. Specifically, the licensee stated that the purpose of their request was to credit the use of OMAs, in conjunction with other defense-in-depth features, in lieu of the separation and protective measures required by III.G.2 for a fire in the fire areas stated above.

In their April 2, 2010, letter the licensee provided an analysis that described how fire prevention is addressed for each of the fire areas for which the OMAs may be required. The licensee developed a Fire Hazards Analysis (FHA) for each fire area or zone identified in its exemption request. For each fire area or zone, the FHA describes the physical location and arrangement of equipment, combustible loading, ignition sources, fire protection features, and proximity of redundant safe shutdown equipment to in situ hazards and identifies deviations from fire protection codes and previously approved exemptions. In addition, for each fire area or zone the licensee's response includes a tabulation of potential ignition sources as well as the equipment that may exhibit high energy arcing faults. For each fire area or zone, the FHA states that the fire protection configuration achieves a level of protection commensurate with that intended by III.G.2.

The 21 areas or zones identified in the request have administratively limited combustible fuel loading with fuel sources consisting primarily of cable insulation and limited floor based combustibles except areas OB–FZ–6A, OB–FZ–6B, and TB–FZ–11B, which contain quantities of transformer liquid or lubricating oil. Combustible fuel loading in most areas is classified as low by the licensee while Fire Areas OB–FZ–6A, OB–FZ–6B, and TB–FA–26 have been classified as having moderate combustible fuel loading and TB–FZ–11B has been classified as having a high combustible fuel loading. In addition, the licensee has stated that they maintain a robust administrative program (*e.g.,* hot work permits, fire watches for hot work, and supervisory controls) to limit and control transient combustible materials and ignition sources in the areas. The fire areas included in the exemption are not shop areas so hot work activities are infrequent and the administrative control programs are in place if hot work activities do occur.

The licensee also stated that 98% of the Oyster Creek cables are jacketed with Vulkene, which passes the horizontal flame test of the Underwriter's Laboratory (UL), therefore reducing the likelihood of the cables themselves contributing to a fire hazard. Furthermore, the areas or zones are of noncombustible construction with typical utilities installed, lighting, ventilation, *etc.* and 3-hour fire resistance-rated barriers normally used to provide fire resistive separation between adjacent fire areas. In some cases, barriers with a fire resistance rating of less than 3 hours are credited but exemptions have been approved or the licensee has stated they have performed engineering evaluations in accordance with Generic Letter 86–10, "Implementation of Fire Protection Requirements," to demonstrate that the barriers are sufficient for the hazard. Walls separating rooms and zones within fire areas are typically constructed of heavy concrete. This compartmentalization of the areas reduces the likelihood for fire events in a particular area to spread to or impact other adjacent areas.

Many fire areas included in this exemption have automatic detection systems installed, although the licensee indicated that not all systems are installed in accordance with a recognized standard with regard to spacing in all areas. In such cases, the licensee has stated that the detectors are located near equipment such that they are likely to detect a fire. Upon detecting smoke, the detectors initiate an alarm in the constantly staffed control room. In addition to the automatic suppression systems noted below, equipment operators are trained fire brigade members and may identify and manually suppress or extinguish a fire using the portable fire extinguishers and manual hose stations located throughout the fire areas if a fire is identified in its early stages of growth.

The licensee stated that the postulated fire events that may require the use of the OMAs would include multiple

failures of various components or equipment. In most cases, it is considered unlikely that the sequence of events required to necessitate the OMAs would fully evolve because of the fire prevention, fire protection, and physical separation features in place. However, in the event that the sequence does evolve, the OMAs are available to provide assurance that safe shutdown can be achieved. For each of the fire areas included in this exemption, the postulated fire scenarios and pertinent details are summarized in the table below.

Each of the fire areas or zones included in this exemption is analyzed below with regard to how the concept of defense-in-depth is achieved for each area or zone and the role of the OMAs in the overall level of safety provided for each area or zone.

3.1 Fire Area CW–FA–14—Circulatory Water Intake

3.1.1 Fire Prevention

The licensee stated that combustible loading is not tracked in this area since it is an outside area. The licensee also stated that the primary combustible materials in the area are transformer liquid and electrical motors; although the amount is not quantified since the area is open to the atmosphere with no walls or ceiling to contain the heat or smoke that may be produced during a fire event. Additionally, the main combustible in this area that could result in the need for the OMAs is Dow Corning 561 Silicon transformer liquid, which the licensee states has characteristics that minimize the likelihood of a fire involving the insulating liquid itself.

3.1.2 Detection, Control, and Extinguishment

CW–FA–14 is not equipped with automatic fire detection or suppression systems but since it is an outdoor area with no walls or ceiling, it is not expected that such systems would enhance this element of defense-in-depth in this area since the area is open to the atmosphere with no walls or ceiling to contain the heat or smoke that may be produced during a fire event. However, the licensee stated that a security tower monitors this area continuously; therefore, any fire of significance would be detected and responded to appropriately by the station fire brigade. Manual suppression is also provided by a fire hydrant and fire hose house located approximately 75 feet from the principal fire hazards.

3.1.3 Preservation of Safe Shutdown Capability

Since Fire Area CW–FA–14 is an outdoor space with no walls or ceiling, smoke and heat would not accumulate within the fire area to cause damage to components remote to the initiating fire or obstruct operator actions.

3.1.4 OMAs Credited for a Fire in This Area

3.1.4.1 OMA #7—Align the Fire Water System to the Isolation Condenser

In order for OMA #7 to be necessary, the loss of the "B" Train of power would have to occur due to fire damage. Unit Substation Transformer (USS) 1B3 is located in the outside area on the west side of the power block on a raised concrete foundation that sits approximately 5 feet above grade. USS 1B3 is considered as a potential ignition source as well as its associated adjacent transformer, USS 1A3, which is located approximately 15 feet west of USS 1B3. Both of these unit substations are located approximately 20 feet from any plant operating equipment (*e.g.,* circulating water pump motor, *etc.*). Additionally, the need to perform this OMA would likely be apparent in the control room based on the loads that are lost (*e.g.,* control room ventilation, service water pump, *etc.*) and a fire at USS 1B3 would be visible from the security tower monitoring the area.

In the unlikely event that a fire does occur and causes the loss of USS 1B3 or its associated cables, OMA #7 is available to manually open V–9–2099 and V–11–49 and close V–11–63 and V–11–41 to align the fire water system for make-up water to Isolation Condenser "B" since there is no power ("B" Train) available to the Condensate Transfer System. The licensee also stated that they have assumed a 10-minute diagnosis period and that the required time to perform the action is 13 minutes while the time available is 45 minutes, which provides a 22-minute margin.

3.1.4.2 OMA #12—Establish CRD Flow to Reactor

In order for OMA #12 to be necessary, a loss of instrument air to the CRD flow control valve would have to occur due to fire damage. The licensee stated that they conservatively assume that instrument air is lost for all Appendix R fires based on the fact that instrument air lines run throughout many areas of the plant. The licensee's analysis assumes that the air line could potentially fail in approximately 45 minutes when exposed to the postulated fire.

The licensee also stated that the normal CRD flow control valve is a single component without a redundant counterpart. Because of this, a manual bypass is provided to maintain flow around the CRD flow control valves that fail closed upon loss of instrument air or control cable damage.

In the unlikely event that a fire does occur and causes the normal flow control valve to be unavailable due to a loss of instrument air or cable damage, OMA #12 is available to manually open V–15–237, throttle V–15–30 while monitoring flow at FI–225–2, and close V–15–52 to establish CRD flow to the reactor. Furthermore, OMA #12 would only be necessary if the Isolation Condenser/CRD systems are utilized for hot shutdown. If OMA #12 becomes necessary, the licensee stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 15 minutes, while the time available is 204 minutes, which provides a 159-minute margin.

The licensee stated that OMA #12 essentially duplicates the Emergency Operating Procedure (EOP) actions for reactor pressure vessel (RPV) level control. Therefore, if a fire did occur and was not immediately discovered, any delay in the entry into the appropriate Fire Support Procedure (FSP) or delay in suppression of the fire would not significantly affect the performance of this OMA, since the EOPs would direct the same action to be performed if required.

3.1.5 Conclusion

Given the combustion resistant properties of the most probable combustible materials, limited ignition sources, and open nature of the area, it is unlikely that a fire would occur, go undetected or unsuppressed by station personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of OMAs #7 and #12 to manipulate the plant in the event of a fire that damages safe shutdown equipment, provides adequate assurance that safe shutdown capability is maintained.

3.2 Fire Area OB–FA–9—Office Bldg. Elev. 23′-6″, 35′-0″, 46′-6″

3.2.1 Fire Prevention

The licensee has classified the fire loading in this fire area as low. The licensee also stated that OB–FA–9 has an administrative fire loading limit of less than 1.5 hours as determined by the time-temperature curve contained in American Society of Testing and

Materials standard E119, "Standard Test Methods for Fire Tests of Building Construction and Materials" (ASTM E119), and that the major combustibles in the multiplexer (MUX) corridor, which is within OC–FA–9, are cable insulation and a wood ceiling on top of the MUX enclosure, which is within the MUX corridor.

3.2.2 Detection, Control, and Extinguishment

The licensee stated that OB–FA–9 has a partial area coverage wet pipe sprinkler system installed. The licensee further stated that the area is not provided with an area-wide detection system but that there is an installed detection system in the main hallways and inside of the MUX corridor and that it is a high traffic area so a fire would likely be detected by personnel. The wet pipe sprinkler system, when actuated, will alarm in the control room to notify operators of a potential fire event. Extinguishment of a fire in the majority of this area will be accomplished by the plant fire brigade.

3.2.3 Preservation of Safe Shutdown Capability

The licensee stated that the MUX corridor within OB–FA–9 has a ceiling height of approximately 10′–6″ and an approximate floor area of 513 square feet in the MUX corridor where the safe shutdown equipment is located so it is unlikely that smoke and heat would accumulate at the height of the safe shutdown equipment and cause a failure due to fire damage.

3.2.4 OMAs Credited for a Fire in This Area

3.2.4.1 OMA #2—Read Condensate Storage Tank (CST) Local Level Indicator LI–424–993

In order for OMA #2 to be necessary, the primary CST level indicator (5F–27) would have to fail as a result of the fire. Should this occur, indication can only be obtained by reading the local indicator (LI–424–993) located at the CST. The licensee stated that the safe shutdown success path structure, system, or component (SSC) cable for the level indicator is routed in a cable tray located approximately 12 feet above the floor in this area (MUX corridor). The cable enters the room in the northwest corner and is routed in a cable tray for approximately 15 feet. It then air drops vertically down into the MUX enclosure. The credited cable is routed in a cable tray with other cables and is routed through the wooden ceiling, which also has some rubber piping insulation on top of the ceiling, thus putting the cable in close proximity to in situ combustibles. However, there are no ignition sources in this area. Therefore, due to the lack of ignition sources, it is not expected that a fire would occur in this area and it is unlikely that the OMA would be required.

In the unlikely event that a fire does occur and causes the loss of the primary CST level indicator, OMA #2 is available to locally read CST level at the local level indicator, LI–424–993. The licensee also stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 7 minutes while the time available is 73 minutes, which provides a 36-minute margin.

3.2.4.2 OMA #12—Establish Control Rod Drive (CRD) Flow to Reactor

In order for OMA #12 to be necessary, a loss of instrument air to the CRD flow control valve would have to occur due to fire damage. The licensee stated that the normal CRD flow control valve is a single component without a redundant counterpart. Because of this, a manual bypass is provided to maintain flow around the CRD flow control valves that fail closed upon loss of instrument air or control cable damage.

In the unlikely event that a fire does occur and causes the normal flow control valve to be unavailable due to a loss of instrument air or cable damage, OMA #12 is available to manually open V–15–237, throttle V–15–30 while monitoring flow at FI–225–2, and close V–15–52 to establish CRD flow to the reactor. Furthermore, OMA #12 would only be necessary if the Isolation Condenser/CRD systems are utilized for hot shutdown. If OMA #12 becomes necessary, the licensee stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 15 minutes, while the time available is 204 minutes, which provides a 159-minute margin.

3.2.5 Conclusion

Given the limited amount of combustible materials, ignition sources, and sufficient volume of the space, it is unlikely that a fire would occur and go undetected or unsuppressed by the sprinkler system noted above, or personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of OMAs #2 and #12 to manipulate the plant in the event of a fire that damages safe shutdown equipment, provides adequate assurance that safe shutdown capability is maintained.

3.3 OB–FZ–6A Office Bldg. "A" 480V Switchgear (SWGR) Room Elev. 23′–6″

3.3.1 Fire Prevention

The licensee has classified the fire loading in this fire zone as moderate. The licensee also stated that this area has an administrative fire loading limit of less than 3 hours as determined by the ASTM E119 time-temperature curve. The main combustibles in this area are cable insulation (approximately 81% of loading) and Dow Corning 561 Silicon transformer liquid (approximately 15% of loading). Additionally, the transformer liquid has characteristics that minimize the likelihood of a fire involving the insulating liquid itself.

3.3.2 Detection, Control, and Extinguishment

The licensee stated that OB–FZ–6A has an automatic smoke detection system, a total flooding automatic Halon 1301 System, and manual fire fighting capabilities (portable extinguishers and hose stations).

3.3.3 Preservation of Safe Shutdown Capability

The licensee stated that OB–FA–6A has a ceiling height of approximately 10′–8″ and an approximate floor area of 1157 square feet so it is unlikely that smoke and heat would accumulate at the height of the safe shutdown equipment and cause a failure due to fire damage.

3.3.4 OMAs Credited for a Fire in This Zone

3.3.4.1 OMA #2—Read Condensate Storage Tank Local Level Indicator LI–424–993

In order for OMA #2 to be necessary, the primary CST level indicator (5F–27) would have to fail as a result of the fire. Should this occur, indication can only be obtained by reading the local indicator (LI–424–993) located at the CST. The licensee stated that the safe shutdown success path cable for the level indicator is routed in a conduit that leaves a 120 VAC distribution panel and travels approximately 5 feet vertically to a cable tray that is approximately 9 feet above the floor. The cable is routed with other cables in the cable tray for approximately 15 feet at which point the cable tray travels up through the ceiling. The liquid filled transformer is located approximately 10 feet north of the cable. However, there is a partial non-rated concrete block wall between the transformer and cable tray that would provide some protection of direct flame impingement or radiant heat transfer on the cable tray. The ignition sources in this fire zone consist

of enclosed metal electrical cabinets (120 VAC and 125 VDC circuits) and the liquid filled transformer (4160 VAC to 480 VAC).

In the unlikely event that a fire does occur and damages the primary CST level indicator, OMA #2 is available to locally read CST level at local indicator LI–424–993. The licensee also stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 7 minutes while the time available is 73 minutes, which provides a 36-minute margin.

3.3.4.2 OMA #9—Manually Control 480V Breakers From Remote Shutdown Panel

In order for OMA #9 to be necessary, damage to the credited and redundant cables would have to occur due to a fire. The licensee stated that the credited and redundant cables are located in the same cable tray with additional cables and that the tray is located approximately 7 feet above the floor. Other than the cables themselves, the primary combustible in this area is a liquid filled transformer, which is located approximately 7 feet from the cable tray. The licensee also stated that the ignition sources in this fire zone consist of electrical cabinets (120 VAC and 125 VDC circuits) and the liquid filled transformer (4160 VAC to 480 VAC). The electrical cabinets are enclosed metal cabinets, which are located approximately 2 feet from the credited and redundant cables in some locations.

In the unlikely event that a fire does occur and damages the credited and redundant cables, OMA #9 is available to manually control the 480V USS 1B2 breakers for CRD Pump NC08B and 1B2M from the Remote Shutdown Panel. The licensee also stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 13 minutes while the time available is 180 minutes, which provides a 137-minute margin.

3.3.4.3 OMA #12—Establish CRD Flow to Reactor

In order for OMA #12 to be necessary, a loss of instrument air to the CRD flow control valve would have to occur due to fire damage. The licensee stated that the normal CRD flow control valve is a single component without a redundant counterpart. Because of this, a manual bypass is provided to maintain flow around the CRD flow control valves that fail closed upon loss of instrument air or control cable damage.

In the unlikely event that a fire does occur and causes the normal flow control valve to be unavailable due to a loss of instrument air or cable damage, OMA #12 is available to manually open V–15–237, throttle V–15–30 while monitoring flow at FI–225–2, and close V–15–52 to establish CRD flow to the reactor. Furthermore, OMA #12 would only be necessary if the Isolation Condenser/CRD systems are utilized for hot shutdown. If OMA #12 becomes necessary, the licensee stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 15 minutes, while the time available is 204 minutes, which provides a 159-minute margin.

3.3.5 Conclusion

Given the limited amount of combustible materials, ignition sources, and the volume of the space, it is unlikely that a fire would occur and go undetected or unsuppressed by the smoke detection or Halon system noted above, or personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this zone, combined with the ability of OMAs #2, #9, and #12 to manipulate the plant in the event of a fire that damages safe shutdown equipment, provide adequate assurance that safe shutdown capability is maintained.

3.4 OB–FZ–6B Office Building "B" 480V SWGR Room Elev. 23′–6″

3.4.1 Fire Prevention

The licensee has classified the fire loading in this fire zone as moderate. The licensee also stated that this area has an administrative fire loading limit of less than 2 hours as determined by the ASTM E119 time-temperature curve. The main combustibles in this area are cable insulation (approximately 28% of loading), Thermo-Lag (approximately 29% of loading) and Dow Corning 561 Silicon transformer liquid (approximately 31% of loading). Also, the transformer liquid has characteristics that minimize the likelihood of a fire involving the insulating liquid itself.

3.4.2 Detection, Control, and Extinguishment

The licensee stated that OB–FZ–6B has an automatic smoke detection system, a total flooding Halon 1301 System, and manual fire fighting capabilities (portable extinguishers and hose stations).

3.4.3 Preservation of Safe Shutdown Capability

The licensee stated that OB–FA–6B has a ceiling height of approximately 10′–8″ and an approximate floor area of 679 square feet so it is unlikely that smoke and heat would accumulate at the height of the safe shutdown equipment and cause a failure due to fire damage.

3.4.4 OMAs Credited for a Fire in This Zone

3.4.4.1 OMA #7—Align the Fire Water System to the Isolation Condenser

In order for OMA #7 to be necessary, the loss of the "B" Train of power would have to occur due to fire damage. Motor control center (MCC) 1B21 is located approximately 5 feet from USS 1B2. The licensee indicated that a credited power cable for the static charger enters the fire zone through the ceiling of the corridor and then enters the main portion of the room through the north wall approximately 9 feet above the floor. It then runs east and down into MCC 1B21. The cable is located approximately 2 feet above the potential ignition source, USS 1B2, and runs directly into ignition source MCC 1B21. The credited power cable for MCC 1B21 is routed from USS 1B2 to MCC 1B21 in a cable tray. This cable tray runs approximately 10 feet above the floor and approximately 2 feet above the potential ignition sources, USS 1B2 and MCC 1B21, but it also enters into both as indicated above. However, both of these ignition sources are contained in enclosed metal cabinets and are not high voltage. The cable tray is also located approximately 10 feet from the ignition source of the USS 1B2 transformer, which is located near the west end of the room.

The licensee also indicated that the "A" train of power is credited and available for this fire zone and that the redundant cable is associated with the "C" battery charger, which is fire wrapped with a 1-hour barrier in this fire zone. It is unlikely that a fire would develop and cause damage to multiple redundant pieces of equipment given the spatial relationship between the credited equipment and ignition sources, the presence of the automatic Halon system, and the protected "C" battery charger cable.

In the unlikely event that a fire does occur and damages the credited and redundant cables, OMA #7 is available to manually open V–9–2099 and V–11–49 and close V–11–63 and V–11–41 to align the fire water system for make-up water to Isolation Condenser "B" since there is no power ("B" Train) available to the Condensate Transfer System. The licensee also stated that they have assumed a 10-minute diagnosis period and that the required time to perform the action is 13 minutes while the time

available is 45 minutes, which provides a 22-minute margin.

3.4.4.2 OMA #12—Establish CRD Flow to Reactor

In order for OMA #12 to be necessary, a loss of instrument air to the CRD flow control valve would have to occur due to fire damage. The licensee stated that the normal CRD flow control valve is a single component without a redundant counterpart. Because of this, a manual bypass is provided to maintain flow around the CRD flow control valves that fail closed upon loss of instrument air or control cable damage.

In the unlikely event that a fire does occur and causes the normal flow control valve to be unavailable due to a loss of instrument air or cable damage, OMA #12 is available to manually open V–15–237, throttle V–15–30 while monitoring flow at FI–225–2, and close V–15–52 to establish CRD flow to the reactor. Furthermore, OMA #12 would only be necessary if the Isolation Condenser/CRD systems are utilized for hot shutdown. If OMA #12 becomes necessary, the licensee stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 15 minutes, while the time available is 204 minutes, which provides a 159-minute margin.

In the unlikely event that a fire does occur and damages multiple redundant trains, OMAs #7 and #12 are available to align the fire water system to the isolation condenser and establish CRD flow. The locations of these OMAs are in separate fire areas from Fire Area OB–FZ–6B so a fire in Fire Area OB–FZ–6B would not impact the locations of the actions.

3.4.5 Conclusion

Given the limited amount of combustible materials, ignition sources, and the volume of the space, it is unlikely that a fire would occur and go undetected or unsuppressed by the smoke detection or Halon system noted above, or personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this zone, combined with the ability of OMAs #7 and #12 to manipulate the plant in the event of a fire that damages safe shutdown equipment, provides adequate assurance that safe shutdown capability is maintained.

3.5 OB–FZ–8A Office Bldg. Reactor Recirculation MG Set Room & OB–FZ–8B Mechanical Equipment Room Elev. 23′–6″ & 35′–0″

3.5.1 Fire Prevention

Fire Zones OB–FZ–8A and 8B are evaluated together for the combustible loading and fire safe shutdown (FSSD) analysis due to the lack of rated fire barriers between the zones. The licensee has classified the fire loading in these fire zones as low. The licensee also stated that these fire zones have an administrative fire loading limit of less than 45 minutes as determined by the ASTM E119 time-temperature curve. There are minimal combustibles in Fire Zone OB–FZ–8B. The major combustibles in Fire Zone OB–FZ–8A are lubricating oil (approximately 83% of loading) and cable insulation (approximately 13% of loading).

3.5.2 Detection, Control, and Extinguishment

The licensee stated that OB–FZ–8A has a partial wet-pipe sprinkler system with a flow alarm that notifies the control room and that the area does not have a smoke detection system, however, a duct smoke detector is located in the exhaust duct of fan EF–1–20. Since operation of the sprinkler system will alarm in the control room, prompt notification of and response by, the fire brigade for any required manual fire fighting activities is expected.

3.5.3 Preservation of Safe Shutdown Capability

The licensee stated that OB–FZ–8A has a ceiling height of approximately 10′–10″ and an approximate floor area of 2128 square feet and OB–FZ–8B has a ceiling height of approximately 11′–0″ and an approximate floor area of 479 square feet so it is unlikely that smoke and heat would accumulate at the height of the safe shutdown equipment and cause a failure due to fire damage.

3.5.4 OMAs Credited for a Fire in these Zones

3.5.4.1 OMA #7—Align the Fire Water System to the Isolation Condenser

In order for OMA #7 to be necessary, the loss of the "B" Train of power would have to occur due to fire damage. The licensee indicated that the cable for the 125 VDC control power is in conduit that enters this zone through the ceiling in the northwest corner and then travels south along the ceiling near the west wall approximately 9 feet above the floor and approximately 7 feet from the primary ignition sources in the area, the motor-generator (MG) Sets, and then leaves through the floor, where it runs within 2 feet of the "E" MG–Set. The licensee also indicated that the "A" train of power is credited and available for this fire zone and that the redundant cable is associated with the "C" battery and this cable is not located in this fire zone.

In the unlikely event that a fire does occur and damages the credited and redundant cables, OMA #7 is available to manually open V–9–2099 and V–11–49 and close V–11–63 and V–11–41 to align the fire water system for make-up water to Isolation Condenser "B" since there is no power ("B" Train) available to the Condensate Transfer System. The licensee also stated that they have assumed a 10-minute diagnosis period and that the required time to perform the action is 13 minutes while the time available is 45 minutes, which provides a 22-minute margin.

3.5.4.2 OMA #12—Establish CRD Flow to Reactor

In order for OMA #12 to be necessary, a loss of instrument air to the CRD flow control valve would have to occur due to fire damage. The licensee stated that the normal CRD flow control valve is a single component without a redundant counterpart. Because of this, a manual bypass is provided to maintain flow around the CRD flow control valves that fail closed upon loss of instrument air or control cable damage.

In the unlikely event that a fire does occur and causes the normal flow control valve to be unavailable due to a loss of instrument air or cable damage, OMA #12 is available to manually open V–15–237, throttle V–15–30 while monitoring flow at FI–225–2, and close V–15–52 to establish CRD flow to the reactor. Furthermore, OMA #12 would only be necessary if the Isolation Condenser/CRD systems are utilized for hot shutdown. If OMA #12 becomes necessary, the licensee stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 15 minutes, while the time available is 204 minutes, which provides a 159-minute margin.

3.5.5 Conclusion

Given the limited amount of combustible materials, ignition sources, and the large volume of the space, it is unlikely that a fire would occur and go undetected or unsuppressed by the smoke detection or sprinkler systems noted above, or personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this zone, combined with the ability of OMAs #7 and #12 to manipulate the plant in the event of a fire that damages safe

shutdown equipment, provides adequate assurance that safe shutdown capability is maintained.

3.6 OB–FZ–8C Office Bldg. A/B Battery Room, Tunnel and Electrical Tray Room Elev. 35′–0″

3.6.1 Fire Prevention

The licensee has classified the fire loading in this fire zone as low. The licensee also stated that this fire zone has an administrative fire loading limit of less than 1.5 hours as determined by the ASTM E119 time-temperature curve. The major combustibles in Fire Zone OB–FZ–8C are electrolyte-filled plastic battery cases and racks (approximately 56% of loading) and cable insulation (approximately 39% of loading).

3.6.2 Detection, Control, and Extinguishment

The licensee stated that OB–FZ–8C has a fixed, total-flooding, Halon 1301 extinguishing system, area-wide smoke detection that is installed at the ceiling level and cross-zoned to sound a local alarm, and an alarm in the control room upon actuation of one detector. Actuation of a second detector will sound a local alarm, discharge the Halon system, trip supply and exhaust fans, and close dampers.

3.6.3 Preservation of Safe Shutdown Capability

The licensee stated that OB–FZ–8C has a ceiling height of approximately 11′–0″ and an approximate floor area of 1292 square feet so it is unlikely that smoke and heat would accumulate at the height of the safe shutdown equipment and cause a failure due to fire damage.

3.6.4 OMAs Credited for a Fire in This Zone

3.6.4.1 OMA #2—Read Condensate Storage Tank Local Level Indicator LI–424–993

In order for OMA #2 to be necessary, damage to the primary CST level indicator (5F–27) cable would have to occur due to a fire. Should this occur, indication can only be obtained by reading the local indicator (LI–424–993) located at the CST. Although there is no redundant train of equipment for the credited source of obtaining CST level Indication, the licensee stated that the tray containing the credited train is located in the Electric Tray Room portion of the zone, which is separated from the main battery room by a cable tunnel that is approximately 25 feet long. The licensee also stated that the credited cable runs in a cable tray with other cables, thus putting it in close proximity to in-situ hazards, however, due to the size and use of the room, there are no other credible hazards including transient combustibles.

In the unlikely event that a fire does occur and causes the loss of the primary CST level indicator, OMA #2 is available to locally read CST level at the local level indicator, LI–424–993. The licensee also stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 7 minutes while the time available is 73 minutes, which provides a 36-minute margin.

3.6.4.2 OMA #7—Align Fire Water to Isolation Condenser

In order for OMA #7 to be necessary, the loss of the "B" Train of power would have to occur due to fire damage. The licensee indicated that the credited cable is located in the A/B Battery Room portion (main portion) of this fire zone and that the credited cable runs in a conduit that begins at 125V DC Distribution Panel B. The cable is routed in a conduit that runs approximately 1 foot above a series of vertical cable trays, approximately 8 feet above the "B" MG Set, and approximately 3 feet over the top of the 125V DC "B" Distribution Center. However, the "B" MG Set is not normally energized since the static charger is utilized normally for charging the "B" Battery. The licensee also indicated that the battery banks are another potential ignition source in the room but that they are located greater than 15 feet from the particular conduit in question but that the failure of the battery itself may also require the OMA. The "A" train of power is credited and available for this fire zone. The redundant cable, "C" battery, "C" Distribution center, *etc.* are not located in this fire zone.

In the unlikely event that a fire does occur and damages the credited and redundant cables, OMA #7 is available to manually open V–9–2099 and V–11–49 and close V–11–63 and V–11–41 to align the fire water system for make-up water to Isolation Condenser "B" since there is no power ("B" Train) available to the Condensate Transfer System. The licensee also stated that they have assumed a 10-minute diagnosis period and that the required time to perform the action is 13 minutes while the time available is 45 minutes, which provides a 22-minute margin.

3.6.4.3 OMA #8—Manually Control USS 1A2 "A" CRD Pump & 1A2M From LSP–1A2

In order for OMA #8 to be necessary, damage to the credited control cables, 1A2M & A CRD Pump, and the redundant control cables, 1B2M and B CRD Pump, would have to occur due to a fire. The licensee stated that the credited and redundant cables are run in the same cable tray with additional cables in the Electric Tray Room portion of this fire area and are separated from the main battery room by a cable tunnel that is approximately 25-feet long. With the exception of the cables themselves, there are no other combustibles or ignition sources and the storage of transient combustibles in this portion of the fire zone is remote since it is a small room with only one door for access or egress.

In the unlikely event that a fire does occur and damages the credited and redundant cables, OMA #8 is available to manually control the 480V USS 1A2 breakers for "A" CRD Pump and 1A2M from LSP–1A2. The licensee also stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 8 minutes while the time available is 60 minutes, which provides a 22-minute margin.

3.6.4.4 OMA #12—Establish CRD Flow to Reactor

In order for OMA #12 to be necessary, a loss of instrument air to the CRD flow control valve would have to occur due to fire damage. The licensee stated that the normal CRD flow control valve is a single component without a redundant counterpart. Because of this, a manual bypass is provided to maintain flow around the CRD flow control valves that fail closed upon loss of instrument air or control cable damage.

In the unlikely event that a fire does occur and causes the normal flow control valve to be unavailable due to a loss of instrument air or cable damage, OMA #12 is available to manually open V–15–237, throttle V–15–30 while monitoring flow at FI–225–2, and close V–15–52 to establish CRD flow to the reactor. Furthermore, OMA #12 would only be necessary if the Isolation Condenser/CRD systems are utilized for hot shutdown. If OMA #12 becomes necessary, the licensee stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 15 minutes, while the time available is 204 minutes, which provides a 159-minute margin.

3.6.4.5 OMA #16—Manually Trip Rx Recirculation Pumps at 4160V Switchgear

In order for OMA #16 to be necessary, damage to the credited cables for tripping the recirculation pumps or the loss of the 125 VDC "B" Battery and "B" Distribution Center would have to occur due to a fire. The licensee stated that the

cable tray configuration in the A/B Battery Room is a series of vertical trays closely stacked together and that the trays containing the required equipment are located approximately 4 feet from the "B" MG Set. However, the "B" MG Set is not normally energized since the static charger is utilized normally for charging the "B" Battery. The licensee also stated that other than the cables themselves, there are no other combustibles or ignition sources in the area and that the placement of transient combustibles is remote since access is limited and the rooms are small in size.

In the unlikely event that a fire does occur and damages the credited and redundant cables, OMA #16 is available to manually trip Reactor Recirculation Pumps ("A," "C," and "E") 4160V Switchgear 1A and 1B. The licensee also stated that they have assumed a 10-minute diagnosis period and that the required time to perform the action is 13 minutes while the time available is 30 minutes, which provides a 7-minute margin.

3.6.5 Conclusion

Given the limited amount of combustible materials, ignition sources, and the large volume of the space, it is unlikely that a fire would occur and go undetected or unsuppressed by the smoke detection or Halon systems noted above, or personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this zone, combined with the ability of OMAs #2, #7, #8, #12, and #16 to manipulate the plant in the event of a fire that damages safe shutdown equipment, provides adequate assurance that safe shutdown capability is maintained.

3.7 OB–FZ–10A Office Bldg. Monitor and Change Room and Operations Support Area Elev. 35′-0″ & 46′-6″

3.7.1 Fire Prevention

The licensee has classified the fire loading in this fire zone as low. The licensee also stated that this area has an administrative fire loading limit of less than 30 minutes as determined by the ASTM E119 time-temperature curve. The major combustibles in this area are cable insulation (approximately 27% of loading), rubber flooring (approximately 31% of loading), miscellaneous plastics (approximately 15% of loading) and protective clothing supplies (approximately 20% of loading). However, since the protective clothing supplies have been placed in metal cans with self-closing lids they are no longer considered a contribution to the combustibles in this area.

3.7.2 Detection, Control, and Extinguishment

The licensee stated that OB–FZ–10A has an area-wide smoke detection system and a wet-pipe automatic sprinkler system installed throughout the area. In addition, a hose station located nearby, outside the control room, provides manual suppression capability.

3.7.3 Preservation of Safe Shutdown Capability

The licensee stated that OB–FZ–10A has a ceiling height of approximately 13′-0″ and an approximate floor area of 2019 square feet so it is unlikely that smoke and heat would accumulate at the height of the safe shutdown equipment and cause a failure due to fire damage.

3.7.4 OMAs Credited for a Fire in This Zone

3.7.4.1 OMA #12—Establish CRD Flow to Reactor

In order for OMA #12 to be necessary, a loss of instrument air to the CRD flow control valve would have to occur due to fire damage. The licensee stated that the normal CRD flow control valve is a single component without a redundant counterpart. Because of this, a manual bypass is provided to maintain flow around the CRD flow control valves that fail closed upon loss of instrument air or control cable damage.

In the unlikely event that a fire does occur and causes the normal flow control valve to be unavailable due to a loss of instrument air or cable damage, OMA #12 is available to manually open V–15–237, throttle V–15–30 while monitoring flow at FI–225–2, and close V–15–52 to establish CRD flow to the reactor. Furthermore, OMA #12 would only be necessary if the Isolation Condenser/CRD systems are utilized for hot shutdown. If OMA #12 becomes necessary, the licensee stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 18 minutes, while the time available is 204 minutes, which provides a 156-minute margin.

3.7.5 Conclusion

Given the limited amount of combustible materials, ignition sources, and the large volume of the space, it is unlikely that a fire would occur and go undetected or unsuppressed by the smoke detection or sprinkler systems noted above, or personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this zone, combined with the ability of OMA #12 to manipulate the plant in the event of a fire that damages safe shutdown equipment, provides adequate assurance that safe shutdown capability is maintained.

3.8 RB–FZ–1D Reactor Bldg. Elev. 51′–3″

3.8.1 Fire Prevention

The licensee has classified the fire loading in this fire zone as low. The licensee also stated that this area has an administrative fire loading limit of less than 30 minutes as determined by the ASTM E119 time-temperature curve. The main combustible in this area is attributed to cable insulation (approximately 84% of loading).

3.8.2 Detection, Control, and Extinguishment

The licensee stated that RB–FZ–1D has an area-wide smoke detection system and an automatic fixed deluge water spray system installed over cable trays and open hatches. The deluge suppression system protecting safety-related cable trays is automatically activated by a cross-zoned detection system consisting of linear heat detection wire located on top of the cables in each original safety-related cable trays and smoke detectors are located in each beam pocket at the ceiling.

3.8.3 Preservation of Safe Shutdown Capability

The licensee stated that RB–FZ–1D has a ceiling height of approximately 21′-0′ and an approximate floor area of 9,100 square feet so it is unlikely that smoke and heat would accumulate at the height of the safe shutdown equipment and cause a failure due to fire damage.

3.8.4 OMAs Credited for a Fire in This Zone

3.8.4.1 OMA #12—Establish CRD Flow to Reactor

In order for OMA #12 to be necessary, a loss of instrument air to the CRD flow control valve would have to occur due to fire damage. The licensee stated that the normal CRD flow control valve is a single component without a redundant counterpart. Because of this, a manual bypass is provided to maintain flow around the CRD flow control valves that fail closed upon loss of instrument air or control cable damage.

In the unlikely event that a fire does occur and causes the normal flow control valve to be unavailable due to a loss of instrument air or cable damage, OMA #12 is available to manually open V–15–237, throttle V–15–30 while

monitoring flow at FI–225–2, and close V–15–52 to establish CRD flow to the reactor. Furthermore, OMA #12 would only be necessary if the Isolation Condenser/CRD systems are utilized for hot shutdown. If OMA #12 becomes necessary, the licensee stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 15 minutes, while the time available is 204 minutes, which provides a 159-minute margin.

3.8.5 Conclusion

Given the limited amount of combustible materials, ignition sources, and the large volume of the space, it is unlikely that a fire would occur and go undetected or unsuppressed by the smoke detection or localized water deluge systems noted above, or personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this zone, combined with the ability of OMA #12 to manipulate the plant in the event of a fire that damages safe shutdown equipment, provides adequate assurance that safe shutdown capability is maintained.

3.9 RB–FZ–1E Reactor Bldg. Elev. 51′-3″

3.9.1 Fire Prevention

The licensee has classified the fire loading in this fire zone as low. The licensee also stated that this area has an administrative fire loading limit of less than 30 minutes as determined by the ASTM E119 time-temperature curve. The main combustible in this area is attributed to cable insulation (approximately 84% of loading).

3.9.2 Detection, Control, and Extinguishment

The licensee stated that RB–FZ–1E has an area-wide smoke detection system and an automatic fixed deluge water spray system installed over cable trays and open hatches. The deluge suppression system protecting safety-related cable trays is automatically activated by a cross-zoned detection system consisting of linear heat detection wire located on top of the cables in each original safety-related cable trays and smoke detectors are located in each beam pocket at the ceiling.

3.9.3 Preservation of Safe Shutdown Capability

The licensee stated that RB–FZ–1E has a ceiling height of approximately 26′-9″ and an approximate floor area of 12,140 square feet so it is unlikely that smoke and heat would accumulate at the height of the safe shutdown equipment and cause a failure due to fire damage.

3.9.4 OMAs Credited for a Fire in This Zone

3.9.4.1 OMA #11—Locally Read CRD Flow Gauge FI–225–998

In order for OMA #11 to be necessary, the normal local gauge for CRD flow, FI–225–2, would have to be damaged by fire. The licensee stated that there are no in-situ combustibles present in the immediate area surrounding the gauge and that the placement of transient combustibles is remote since the gauge is surrounded by piping and tubing. The licensee also stated that the nearest ignition source is MCC 1A21B, which is located approximately 8 feet from the flow gauge. However, the solid steel rear of the MCC faces the flow gauge making it highly unlikely that this potential ignition source would adversely impact the flow gauge.

OMA #11 would require re-entry into Fire Zone RB–FZ–1E to manually control CRD System valves V–15–237, V–15–30, and V–15–52 located in this fire zone while monitoring flow at FI–225–998 to establish CRD flow to the reactor due to the loss of instrument air to the CRD flow control valve. Fusing of the unprotected CRD valves by heat from a fire resulting in the valves becoming inoperable is not considered credible because of the low fire loading, the provision of automatic fire detection and suppression capability and the heat sink capability of the water filled piping connected to the valve. Operation of one of the valves that is in close proximity to these valves was previously approved in the exemption discussed above.

In the unlikely event that a fire occurs and this flow gauge becomes unreadable, OMA #11 is available to locally read flow gauge FI–225–998, which is the redundant instrument that provides the same data and is mounted on an instrument rack located in Fire Zone RB–FZ–1D. The licensee also stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 100 minutes, including a 90-minute allowance before re-entry, while the time available is 204 minutes, which provides a 74-minute margin.

3.9.4.2 OMA #12—Establish CRD Flow to Reactor

In order for OMA #12 to be necessary, a loss of instrument air to the CRD flow control valve would have to occur due to fire damage. The licensee stated that the normal CRD flow control valve is a single component without a redundant counterpart. Because of this, a manual bypass is provided to maintain flow around the CRD flow control valves that fail closed upon loss of instrument air or control cable damage.

In the unlikely event that a fire does occur and causes the normal flow control valve to be unavailable due to a loss of instrument air or cable damage, OMA #12 is available to reenter RB–FZ–1E and manually open V–15–237, throttle V–15–30 while monitoring flow at FI–225–2, and close V–15–52 to establish CRD flow to the reactor. Furthermore, OMA #12 would only be necessary if the Isolation Condenser/CRD systems are utilized for hot shutdown. If OMA #12 becomes necessary, the licensee stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 100 minutes, including a 90-minute allowance before re-entry, while the time available is 204 minutes, which provides a 74-minute margin.

3.9.5 Conclusion

Given the limited amount of combustible materials, ignition sources, and the large volume of the space, it is unlikely that a fire would occur and go undetected or unsuppressed by the smoke detection or localized water deluge systems noted above, or personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this zone, combined with the ability of OMAs #11 and #12 to manipulate the plant in the event of a fire that damages safe shutdown equipment, provides adequate assurance that safe shutdown capability is maintained.

3.10 RB–FZ–1F3 Reactor Bldg. Northwest Corner Elev. -19′-6″

3.10.1 Fire Prevention

The licensee has classified the fire loading in this fire zone as low. The licensee also stated that this area has an administrative fire loading limit of less than 30 minutes as determined by the ASTM E119 time-temperature curve. The major combustibles in this area are cable insulation (approximately 58% of loading), ladders (approximately 16% of loading) and lubricating oil in pumps (approximately 16% of loading).

3.10.2 Detection, Control, and Extinguishment

The licensee stated that RB–FZ–1F3 has smoke detectors which alarm locally and in the control room installed over hazards rather than mounted at the ceiling. Fire extinguishers are also

provided for manual fire fighting backup. Hose lines are available from outside hydrants and hose houses.

3.10.3 Preservation of Safe Shutdown Capability

The licensee stated that RB–FZ–1F3 has a ceiling height of approximately 41′-6″ and an approximate floor area of 560 square feet so it is unlikely that smoke and heat would accumulate at the height of the safe shutdown equipment and cause a failure due to fire damage.

3.10.4 OMAs Credited for a Fire in This Zone

3.10.4.1 OMA #13—Manually Align Core Spray to CST To Provide Reactor Coolant Makeup

In order for OMA #13 to be necessary, both CRD pumps located in this area would have to become damaged due to a fire. The licensee stated that the pumps are separated by a horizontal distance of approximately 6 feet and that the associated cables and conduits are in close proximity to each other. The licensee also stated that the primary ignition sources in the area, aside from the pumps themselves, are located approximately 18 feet from the CRD pumps.

In the unlikely event that a fire occurs and causes damage to both pumps, OMA #13 is available to re-enter this fire zone and manually open Core Spray valves V–20–1 and V–20–2 and close V–20–4 (V–20–2 and V–20–4 are located in Fire Zone RB–FZ–1F2) to provide Reactor Coolant Makeup from the CST for Fire Zone RB–FZ–1F3. The licensee also stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 35 minutes while the time available is 204 minutes, which provides a 139-minute margin.

3.10.5 Conclusion

Given the limited amount of combustible materials, ignition sources, and large volume of the space it is unlikely that a fire would occur and go undetected or unsuppressed by the smoke detection system or personnel and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this zone, combined with the ability of OMA #13 to manipulate the plant in the event of a fire that damages safe shutdown equipment, provides adequate assurance that safe shutdown capability is maintained.

3.11 RB–FZ–1F5 Reactor Bldg. Torus Room Elev. -19′-6″

3.11.1 Fire Prevention

The licensee has classified the fire loading in this fire zone as low. The licensee also stated that this area has an administrative fire loading limit of less than 30 minutes as determined by the ASTM E119 time-temperature curve. The major combustibles in this area are cable insulation (approximately 19% of loading) and gratings (approximately 76% of loading). The grating, which is the largest plastic material in this area, has a low flame spread rating (less than 25).

3.11.2 Detection, Control, and Extinguishment

The licensee stated that RB–FZ–1F5 does not have a detection or suppression systems. The NRC staff finds that the, because of the low amount of combustible material in the area and low flame spread rating of the majority of this material, a fire in this zone is not expected to be of significant size or duration.

3.11.3 Preservation of Safe Shutdown Capability

The licensee stated that RB–FZ–1F5 is a voluminous area with an approximate floor area of 11450 square feet and a ceiling height of approximately 41′-6″, therefore, it is unlikely that smoke and heat from a fire in the area would accumulate at the location of the instrument air line and cause a loss of instrument air.

3.11.4 OMAs Credited for a Fire in This Zone

3.11.4.1 OMA #12—Establish CRD Flow to Reactor

In order for OMA #12 to be necessary, a loss of instrument air to the CRD flow control valve would have to occur due to fire damage. The licensee stated that the normal CRD flow control valve is a single component without a redundant counterpart. Because of this, a manual bypass is provided to maintain flow around the CRD flow control valves that fail closed upon loss of instrument air or control cable damage.

In the unlikely event that a fire does occur and causes the normal flow control valve to be unavailable due to a loss of instrument air or cable damage, OMA #12 is available to manually open V–15–237, throttle V–15–30 while monitoring flow at FI–225–2, and close V–15–52 to establish CRD flow to the reactor. Furthermore, OMA #12 would only be necessary if the Isolation Condenser/CRD systems are utilized for hot shutdown. If OMA #12 becomes necessary, the licensee stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 15 minutes, while the time available is 204 minutes, which provides a 159-minute margin.

3.11.5 Conclusion

Given the limited amount of combustible materials, ignition sources, and the large volume of the area, it is unlikely that a fire would occur and go undetected or unsuppressed by personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this zone, combined with the ability of OMA #12 to manipulate the plant in the event of a fire that damages safe shutdown equipment, provides adequate assurance that safe shutdown capability is maintained.

3.12 RB–FZ–1G Reactor Bldg. Shutdown Cooling Room Elev. 38′-0″ & 51′-3″

3.12.1 Fire Prevention

The licensee has classified the fire loading in this fire zone as low. The licensee also stated that this area has an administrative fire loading limit of less than 30 minutes as determined by the ASTM E119 time-temperature curve. The main combustibles in this area are cable insulation (approximately 12% of loading), plastic (approximately 57% of loading) and Class A combustibles (approximately 14% of loading). The grating, which is the majority of the plastic material in this area, has a low flame spread rating (less than 25).

3.12.2 Detection, Control, and Extinguishment

The licensee stated that RB–FZ–1G is provided with a smoke detection system that alarms locally and in the control room to provide prompt notification of a potential fire event.

3.12.3 Preservation of Safe Shutdown Capability

The licensee stated that RB–FZ–1G has a ceiling height of approximately 21′, measured from the 51′-3″ elevation, and an approximate floor area of 1609 square feet so it is unlikely that smoke and heat would accumulate at the height of the safe shutdown equipment and cause a failure due to fire damage.

3.12.4 OMAs Credited for a Fire in This Zone

3.12.4.1 OMA #11—Locally Read CRD Flow Gauge FI–225–998

In order for OMA #11 to be necessary, the normal local gauge for CRD flow, FI–

225–2, located in Fire Zone RB–FZ–1E or its associated cables, would have to be damaged by fire. The licensee stated that there are no in-situ combustibles present in the immediate area surrounding the gauge and that the placement or storage of transient combustibles is remote since the gauge is surrounded by piping and tubing. The licensee also stated that the nearest ignition source is MCC 1A21B, which is located approximately 8 feet from the flow gauge. However, the solid steel rear of the MCC faces the flow gauge making it highly unlikely that this potential ignition source would adversely impact the flow gauge.

In the unlikely event that a fire occurs and this flow gauge becomes unreadable, OMA #11 is available to locally read flow gauge FI–225–998, which is the redundant instrument that provides the same data and is mounted on an instrument rack located in Fire Zone RB–FZ–1D. The licensee also stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 100 minutes, including a 90-minute allowance before re-entry, while the time available is 204 minutes, which provides a 74-minute margin.

3.12.4.2 OMA #12—Establish CRD Flow to Reactor

In order for OMA #12 to be necessary, a loss of instrument air to the CRD flow control valve would have to occur due to fire damage. The licensee stated that the normal CRD flow control valve is a single component without a redundant counterpart. Because of this, a manual bypass is provided to maintain flow around the CRD flow control valves that fail closed upon loss of instrument air or control cable damage.

In the unlikely event that a fire does occur and causes the normal flow control valve to be unavailable due to a loss of instrument air or cable damage, OMA #12 is available to manually open V–15–237, throttle V–15–30 while monitoring flow at FI–225–2, and close V–15–52 to establish CRD flow to the reactor. Furthermore, OMA #12 would only be necessary if the Isolation Condenser/CRD systems are utilized for hot shutdown. If OMA #12 becomes necessary, the licensee stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 100 minutes, including a 90-minute allowance before re-entry, while the time available is 204 minutes, which provides a 74-minute margin.

3.12.5 Conclusion

Given the limited amount of combustible materials, ignition sources, and large volume of the space, it is unlikely that a fire would occur and go undetected or unsuppressed by the smoke detection system or personnel and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this zone, combined with the ability of OMAs #11 and #12 to manipulate the plant in the event of a fire that damages safe shutdown equipment, provides adequate assurance that safe shutdown capability is maintained.

3.13 TB–FA–3A Turbine Bldg. 4160V Emergency Switchgear Vault 1C Elev. 23′-6″

3.13.1 Fire Prevention

The licensee has classified the fire loading in this fire area as low. The licensee also stated that this area has an administrative fire loading limit of less than 30 minutes as determined by the ASTM E119 time-temperature curve. There are minimal amounts of cable insulation (approximately 5% of loading) miscellaneous plastic (approximately 73% of loading) and class A combustibles such as paper for procedures (approximately 20% of loading) in this area.

3.13.2 Detection, Control, and Extinguishment

The licensee stated that TB–FA–3A is provided with an area-wide smoke detection system and a total-flooding, manually actuated CO_2 system.

3.13.3 Preservation of Safe Shutdown Capability

The licensee stated that TB–FA–3A has a ceiling height of approximately 21′ and an approximate floor area of 336 square feet so it is unlikely that smoke and heat would accumulate at the height of the safe shutdown equipment and cause a failure due to fire damage.

3.13.4 OMAs Credited for a Fire in This Area

3.13.4.1 OMA #12—Establish CRD Flow to Reactor

In order for OMA #12 to be necessary, a loss of instrument air to the CRD flow control valve would have to occur due to fire damage. The licensee stated that the normal CRD flow control valve is a single component without a redundant counterpart. Because of this, a manual bypass is provided to maintain flow around the CRD flow control valves that fail closed upon loss of instrument air or control cable damage.

In the unlikely event that a fire does occur and causes the normal flow control valve to be unavailable due to a loss of instrument air or cable damage, OMA #12 is available to manually open V–15–237, throttle V–15–30 while monitoring flow at FI–225–2, and close V–15–52 to establish CRD flow to the reactor. Furthermore, OMA #12 would only be necessary if the Isolation Condenser/CRD systems are utilized for hot shutdown. If OMA #12 becomes necessary, the licensee stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 15 minutes, while the time available is 204 minutes, which provides a 159-minute margin.

3.13.5 Conclusion

Given the limited amount of combustible materials, ignition sources, and large volume of the space, it is unlikely that a fire would occur and go undetected or unsuppressed by the smoke detection or CO_2 systems, or personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of OMA #12 to manipulate the plant in the event of a fire that damages safe shutdown equipment, provides adequate assurance that safe shutdown capability is maintained.

3.14 TB–FA–26 Turbine Bldg. 125V DC Battery Room C Elev. 23′-6″

3.14.1 Fire Prevention

The licensee has classified the fire loading in this fire area as moderate. The licensee also stated that this area has an administrative fire loading limit of less than 90 minutes as determined by the ASTM E119 time-temperature curve. The major combustibles in this area are plastic, which is contributed by the battery cases (approximately 92% of loading) and cable insulation (approximately 6% of loading).

3.14.2 Detection, Control, and Extinguishment

The licensee stated that TB–FA–26 has an area-wide automatic pre-action sprinkler system and an area-wide smoke detection system installed. Additionally, the licensee identified that the battery cases are filled with water which would provide some resistance to combustion of the cases.

3.14.3 Preservation of Safe Shutdown Capability

The licensee stated that there are no specific cables in this fire area associated with the OMAs identified for Fire Area TB–FA–26 and that the only

FSSD component and cable located in this fire area is associated with the "C" battery. Additionally, per the Oyster Creek Updated Final Safety Analysis Report, Section 8.3.2.4, the "B" 125V DC distribution system is redundant to the "C" system and the two systems are physically independent.

3.14.4 OMAs Credited for a Fire in This Area

The licensee stated that this fire area is wholly contained within Fire Zone TB–FZ–11C (A and B 4160V Room) and that all cables to TB–FA–26 must traverse TB–FZ–11C. Therefore, TB–FA–26 and TB–FZ–11C were analyzed together for safe shutdown purposes and the OMAs are duplicated for these two plant areas. Refer to Section 3.16 below for NRC staff's evaluation of the feasibility of OMAs #1, #3, #6, and #12, which are common to both areas.

3.14.5 Conclusion

Given the limited amount of combustible materials, ignition sources, and lack of multiple safe shutdown trains in this area, it is unlikely that a fire would occur and go undetected or unsuppressed by the smoke detection or sprinkler systems, or personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of OMAs #1, #3, #6, and #12 to manipulate the plant in the event of a fire that damages safe shutdown equipment, provides adequate assurance that safe shutdown capability is maintained.

3.15 TB–FZ–11B Turbine Bldg. Lube Oil Storage, Purification and Pumping Area Elev. 0′-0″, 27′-0″, and 36′-0″

3.15.1 Fire Prevention

The licensee has classified the fire loading in this fire zone as high. The licensee also stated that this fire zone has administrative controls such that additional combustible materials are not introduced into this zone and defense-in-depth features to control a potential oil fire in this zone. The major combustibles in this area are lubricating oil (approximately 99% of loading) and cable insulation (approximately 0.3% of loading). The amount of oil contained in the lube oil storage tanks in this fire zone results in a combustible loading of approximately 14 hours.

3.15.2 Detection, Control, and Extinguishment

The licensee stated that TB–FZ–11B has automatic suppression systems installed over principal combustibles and a rate of rise/fixed temperature fire detection system installed at the lube oil tank. A closed head automatic sprinkler system protects cable trays and open head water spray deluge system protects oil handling equipment and the oil storage tank. Thermal detectors are located in close proximity to the lube oil tank so that a lube oil fire would be quickly detected, which in turn would activate the deluge system for extinguishment. Additionally, the licensee stated that there are fire extinguishers provided throughout the zone and that aqueous film-forming foam (AFFF) is staged in the Fire Brigade van for use if necessary.

3.15.3 Preservation of Safe Shutdown Capability

The licensee stated that the ceiling heights in the area are approximately 9′-0″ in the basement hallway, approximately 19′-0″ in the basement stairs, approximately 26′-0″ on the first floor of the area, and approximately 42′-0″ on the second floor of the area. Additionally, the licensee stated that the floor area, measured at the 0′-0″ elevation is approximately 3,175 square feet.

3.15.4 OMAs Credited for a Fire in This Zone

3.15.4.1 OMA #1—Manually Trip 4160V 1D Breakers and Control USS 1B2 & 1B3 Breakers Locally at LSP–1D

In order for OMA #1 to be necessary, damage to the credited and redundant cables would have to occur due to a fire. The licensee stated that these cables are located in the same tray with additional cables and are generally located approximately 14 feet above the floor. The licensee also stated that the cables pass over the top of potential ignition sources MCC 1A12 and MCC 1B12 and that the cables are located approximately 6 feet above these ignition sources. Additionally, the lube oil tanks are located below the cables, although not directly below, with a distance of approximately 26 feet separating the cables and the tanks. The cables are also located approximately 20 feet from ignition sources MCC 1A12A and 1B12A.

In the unlikely event that a fire does occur and damages the credited and redundant cables, OMA #1 is available to manually trip the 4160V 1D breakers and control USS 1B2 and the 1B3 480V breakers locally at LSP–1D. The licensee also stated that they have assumed a 10-minute diagnosis period and that the required time to perform the action is 19 minutes while the time available is 45 minutes, which provides a 16-minute margin.

3.15.4.2 OMA #2—Read Condensate Storage Tank Local Level Indicator LI–424–993

In order for OMA #2 to be necessary, damage to the primary CST level indicator (5F–27) cable would have to occur due to a fire. The licensee stated that this cable is located approximately 20 feet above the floor and that the nearest primary ignition source in the area, the lube oil tank, is located approximately 7 feet below the cable. With the exception of the cables themselves, there are no other ignition sources or combustibles located near the cables.

In the unlikely event that a fire does occur and damages the primary CST level indicator, OMA #2 is available to locally read CST level at the local indicator, LI–424–993, located at the CST. The licensee also stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 7 minutes while the time available is 73 minutes, which provides a 36-minute margin.

3.15.4.3 OMA #3—Manually Control 1B3M Breaker at LSP–1B3

In order for OMA #3 to be necessary, the credited and redundant cables would have to be damaged due to a fire. The licensee stated that these cables are located in the same tray with additional cables and are generally located approximately 14 feet above the floor. The licensee also stated that the cables pass over the top of potential ignition sources MCC 1A12 and MCC 1B12 and that the cables are located approximately 6 feet above these ignition sources. Additionally, the lube oil tanks are located below the cables, although not directly below, with a distance of approximately 26 feet separating the cables and the tanks. The cables are also located approximately 20 feet from ignition sources MCC 1A12A and 1B12A.

In the unlikely event that a fire does occur and damages the credited and redundant cables, OMA #3 is available to manually control the 1B3M breaker locally from LSP–1B3. The licensee also stated that they have assumed a 10-minute diagnosis period and that the required time to perform the action is 10 minutes while the time available is 45 minutes, which provides a 25-minute margin.

3.15.4.4 OMA #4—Manually Control Condensate Transfer Pump 1–2 from LSP–1B32

In order for OMA #4 to be necessary, damage to the credited and redundant cables for the Condensate Transfer

Pump 1–2 would have to be damaged due to a fire. The licensee stated that these cables are located in the same tray with additional cables and are generally located approximately 20 feet above the floor and approximately 7 feet above the lube oil tank.

In the unlikely event that a fire does occur and damages the credited and redundant cables, OMA #4 is available to manually control Condensate Transfer Pump 1–2 locally from LSP–1B32. The licensee also stated that they have assumed a 10-minute diagnosis period and that the required time to perform the action is 10 minutes while the time available is 45 minutes, which provides a 25-minute margin.

3.15.4.5 OMA #6—Manually Reclose Feeder Breaker MCC 1B32 at USS 1B3

In order for OMA #6 to be necessary, power to USS 1B3 or the 1B 4160V switchgear would have to be lost due to a fire. The licensee stated that these cables are located in the same tray with additional cables and are generally located approximately 14 feet above the floor. The licensee also stated that the cables pass over the top of potential ignition sources MCC 1A12 and MCC 1B12 and that the cables are located approximately 6 feet above these ignition sources. Additionally, the lube oil tanks are located below the cables, although not directly below, with a distance of approximately 26 feet separating the cables and the tanks. The cables are also located approximately 20 feet from ignition sources MCC 1A12A and 1B12A.

In the unlikely event that a fire does occur and causes a loss of power to USS 1B3 or a loss of the 1B 4160V switchgear, OMA #6 is available to manually re-close Feeder Breaker MCC 1B32 at USS 1B3 due to an under voltage trip. The licensee also stated that they have assumed a 10-minute diagnosis period and that the required time to perform the action is 6 minutes while the time available is 45 minutes, which provides a 29-minute margin.

3.15.4.6 OMA #12—Establish CRD Flow to Reactor

In order for OMA #12 to be necessary, a loss of instrument air to the CRD flow control valve would have to occur due to fire damage. The licensee stated that the normal CRD flow control valve is a single component without a redundant counterpart. Because of this, a manual bypass is provided to maintain flow around the CRD flow control valves that fail closed upon loss of instrument air or control cable damage.

In the unlikely event that a fire does occur and causes the normal flow control valve to be unavailable due to a loss of instrument air or cable damage, OMA #12 is available to manually open V–15–237, throttle V–15–30 while monitoring flow at FI–225–2, and close V–15–52 to establish CRD flow to the reactor. Furthermore, OMA #12 would only be necessary if the Isolation Condenser/CRD systems are utilized for hot shutdown. If OMA #12 becomes necessary, the licensee stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 15 minutes, while the time available is 204 minutes, which provides a 159-minute margin.

3.15.4.7 OMA #16—Manually Trip Rx Recirculation Pumps at 4160V Switchgear

In order for OMA #16 to be necessary, the credited and redundant cables would have to be damaged due to a fire. The licensee stated that these cables are located in the same tray with additional cables and are generally located approximately 14 feet above the floor. The licensee also stated that the cables pass over the top of potential ignition sources MCC 1A12 and MCC 1B12 and that the cables are located approximately 6 feet above these ignition sources. Additionally, the lube oil tanks are located below the cables, although not directly below, with a distance of approximately 26 feet separating the cables and the tanks. The cables are also located approximately 20 feet from ignition sources MCC 1A12A and 1B12A.

In the unlikely event that a fire does occur and damages the credited and redundant cables, OMA #16 is available to manually trip Reactor Recirculation Pumps (“A,” “B,” “C,” “D” and “E”) 4160V Switchgear 1A and 1B. The licensee also stated that they have assumed a 10-minute diagnosis period and that the required time to perform the action is 13 minutes while the time available is 30 minutes, which provides a 7-minute margin.

3.15.5 Conclusion

Although the fire loading for this zone is high, the limited ignition sources, large volume of the space, and the detection and suppression system make it unlikely that a fire would occur and go undetected or unsuppressed and damage the safe shutdown equipment. Additionally, the availability of fire extinguishers and AFFF, which is effective against oil based fires, provides an augmented ability to suppress a fire prior to damaging safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this zone, combined with the ability of OMAs #1, #2, #3, #4, #6, #12, and #16 to manipulate the plant in the event of a fire that damages safe shutdown equipment, provides adequate assurance that safe shutdown capability is maintained.

3.16 TB–FZ–11C Turbine Bldg. 4160V SWGR Room 1A and 1B Elev. 23′-6″

3.16.1 Fire Prevention

The licensee has classified the fire loading in this fire zone as low. The licensee also stated that this area has an administrative fire loading limit of less than 30 minutes as determined by the ASTM E119 time-temperature curve. The main combustible loading is attributed to cable insulation (approximately 73% of loading) and plastic (approximately 17% of loading).

3.16.2 Detection, Control, and Extinguishment

The licensee stated that TB–FZ–11C has an area-wide smoke detection system and an area-wide automatic fixed pre-action sprinkler system installed (except in the small caged area located to the east of Fire Area TB–FA–3A).

3.16.3 Preservation of Safe Shutdown Capability

The licensee stated that TB–FZ–11C has a ceiling height of approximately 21′-8″ and an approximate floor area of 2666 square feet so it is unlikely that smoke and heat would accumulate at the height of the safe shutdown equipment and cause a failure due to fire damage.

3.16.4 OMAs Credited for a Fire in This Zone

3.16.4.1 OMA #1—Manually Trip 4160V 1D Breakers and Control USS 1B2 & 1B3 Breakers Locally at LSP–1D

In order for OMA #1 to be necessary, the credited cables for USS 1B2 and 1B3 4160V breakers and the redundant cables for USS 1A2 and 1A3 breakers would have to be damaged due to a fire. The licensee stated that these cables are located in the same tray with additional cables and are generally located at least 17 feet above the floor. The licensee also stated that the tray passes over the top of potential ignition source “B” 4160V switchgear and that the cables are located approximately 9 feet above this ignition source and 3 feet above the iso-phase bus duct at their closest point.

In the unlikely event that a fire does occur and damages the credited and redundant cables, OMA #1 is available to manually trip the 4160V 1D breakers and control USS 1B2 and the 1B3 480V breakers locally at LSP–1D. The licensee

also stated that they have assumed a 10-minute diagnosis period and that the required time to perform the action is 24 minutes while the time available is 45 minutes, which provides an 11-minute margin.

3.16.4.3 OMA #3—Manually Control 1B3M Breaker at LSP–1B3

In order for OMA #3 to be necessary, the credited and redundant cables would have to be damaged due to a fire. The licensee stated that these cables are located in the same tray with additional cables and are generally located at least 17 feet above the floor. The licensee also stated that the tray passes over the top of potential ignition source "B" 4160V switchgear and that the cables are located approximately 9 feet above this ignition source and 3 feet above the iso-phase bus duct at their closest point.

In the unlikely event that a fire does occur and damages the credited and redundant cables, OMA #3 is available to manually control the 1B3M breaker locally from LSP–1B3. The licensee also stated that they have assumed a 10-minute diagnosis period and that the required time to perform the action is 10 minutes while the time available is 45 minutes, which provides a 25-minute margin.

3.16.4.5 OMA #6—Manually Reclose Feeder Breaker MCC 1B32 at USS 1B3

In order for OMA #6 to be necessary, power to USS 1B3 or the 1B 4160V switchgear would have to be lost due to a fire. The licensee stated that these cables are located in the same tray with additional cables and are generally located at least 17 feet above the floor. The licensee also stated that the tray passes over the top of potential ignition source "B" 4160V switchgear and that the cables are located approximately 9 feet above this ignition source and 3 feet above the iso-phase bus duct at their closest point.

In the unlikely event that a fire does occur and causes a loss of power to USS 1B3 or a loss of the 1B 4160V switchgear, OMA #6 is available to manually re-close Feeder Breaker MCC 1B32 at USS 1B3 due to an under voltage trip. The licensee also stated that they have assumed a 10-minute diagnosis period and that the required time to perform the action is 6 minutes while the time available is 45 minutes, which provides a 29-minute margin.

3.16.4.6 OMA #12—Establish CRD Flow to Reactor

In order for OMA #12 to be necessary, a loss of instrument air to the CRD flow control valve would have to occur due to fire damage. The licensee stated that the normal CRD flow control valve is a single component without a redundant counterpart. Because of this, a manual bypass is provided to maintain flow around the CRD flow control valves that fail closed upon loss of instrument air or control cable damage.

In the unlikely event that a fire does occur and causes the normal flow control valve to be unavailable due to a loss of instrument air or cable damage, OMA #12 is available to manually open V–15–237, throttle V–15–30 while monitoring flow at FI–225–2, and close V–15–52 to establish CRD flow to the reactor. Furthermore, OMA #12 would only be necessary if the Isolation Condenser/CRD systems are utilized for hot shutdown. If OMA #12 becomes necessary, the licensee stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 15 minutes, while the time available is 204 minutes, which provides a 159-minute margin.

3.16.5 Conclusion

Given the limited amount of combustible materials, ignition sources, and large volume of the space, it is unlikely that a fire would occur and go undetected or unsuppressed by the smoke detection or sprinkler systems noted above, or personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this zone, combined with the ability of OMAs #1, #3, #6, and #12 to manipulate the plant in the event of a fire that damages safe shutdown equipment, provides adequate assurance that safe shutdown capability is maintained.

3.17 TB–FZ–11D Turbine Bldg. Basement Floor South End Elev. 3′-6″

3.17.1 Fire Prevention

The licensee has classified the fire loading in this fire zone as low. The licensee also stated that this area has an administrative fire loading limit of less than 30 minutes as determined by the ASTM E119 time-temperature curve. The major combustibles in this area are cable insulation (approximately 29% of loading), Dow Corning 561 Silicon transformer liquid (approximately 15% of loading) and lubricating oil (approximately 40% of loading).

3.17.2 Detection, Control, and Extinguishment

The licensee stated that an automatic wet-pipe sprinkler system and an automatic water spray system located at the hydrogen seal oil unit are installed in the area.

3.17.3 Preservation of Safe Shutdown Capability

The licensee stated that TB–FZ–11D has a ceiling height of approximately 19′ and an approximate floor area of 9668 square feet so it is unlikely that smoke and heat would accumulate at the height of the safe shutdown equipment and cause a failure due to fire damage.

3.17.4 OMAs Credited for a Fire in This Zone

3.17.4.1 OMA #1—Manually Trip 4160V 1D Breakers and Control USS 1B2 & 1B3 Breakers Locally at LSP–1D

In order for OMA #1 to be necessary, the credited cables for USS 1B2 and 1B3 4160V breakers and the redundant cables for USS 1A2 and 1A3 breakers would have to be damaged due to a fire. The licensee stated that these cables are located in the same tray with additional cables and are generally located at least 15 feet above the floor. The primary combustible fuel load in the area is the cables themselves and storage of transient combustibles is limited due to a sump and abandoned acid/caustic tanks located in the area.

The licensee also stated that the primary ignition sources in the area near the cable trays are the Turbine Building Closed Cooling Water Pumps and USS 1A1 and its associated transformer (4160V to 480V transformer). However, the Turbine Building Closed Cooling Water Pumps contain less than 5 gallons of oil and are enclosed in metal casings and the cable tray containing the cables is approximately 13 feet from the top of the pumps/motors. The top of USS 1A1 and its associated transformer are located approximately 30 feet diagonally from the credited cables and approximately 15 feet diagonally from the redundant cables. Additionally, there is a concrete ceiling beam, with a water curtain sprinkler system attached, which would provide some shielding for the cables from potential products of combustion generated by this ignition source. Sprinkler heads are also located in a ceiling pocket between the concrete ceiling beam and the USS 1A1 and transformer.

In the unlikely event that a fire does occur and damages the credited and redundant cables, OMA #1 is available to manually trip the 4160V 1D breakers and control USS 1B2 and the 1B3 480V breakers locally at LSP–1D. The licensee also stated that they have assumed a 10-minute diagnosis period and that the required time to perform the action is 24 minutes while the time available is 45 minutes, which provides an 11-minute margin.

3.17.4.2 OMA #3—Manually Control 1B3M Breaker at LSP–1B3

In order for OMA #3 to be necessary, the credited and redundant cables would have to be damaged due to a fire. The licensee stated that these cables are located in the same tray with additional cables and are generally located at least 15 feet above the floor. The primary combustible fuel load in the area is the cables themselves and storage of transient combustibles is limited due to a sump and abandoned acid/caustic tanks located in the area.

The licensee also stated that the primary ignition sources in the area near the cable trays are the Turbine Building Closed Cooling Water Pumps and USS 1A1 and its associated transformer (4160V to 480V transformer). However, the Turbine Building Closed Cooling Water Pumps contain less than 5 gallons of oil and are enclosed in metal casings and the cable tray containing the cables is approximately 13 feet from the top of the pumps/motors. The top of USS 1A1 and its associated transformer are located approximately 30 feet diagonally from the credited cables and approximately 15 feet diagonally from the redundant cables. Additionally, there is a concrete ceiling beam, with a water curtain sprinkler system attached, which would provide some shielding for the cables from potential products of combustion generated by this ignition source. Sprinkler heads are also located in a ceiling pocket between the concrete ceiling beam and the USS 1A1 and transformer.

In the unlikely event that a fire does occur and damages the credited and redundant cables, OMA #3 is available to manually control the 1B3M breaker locally from LSP–1B3. The licensee also stated that they have assumed a 10-minute diagnosis period and that the required time to perform the action is 10 minutes while the time available is 45 minutes, which provides a 25-minute margin.

3.17.4.3 OMA #5—Manually Control Diesel Generator #2 from LSP–DG2

In order for OMA #5 to be necessary, damage to the credited and redundant cables for Diesel Generator #1 and #2 would have to occur due to a fire. The licensee stated that the credited and redundant cables are located in the same cable trays, in some areas, with additional cables and that the cable trays are approximately 17 feet above the floor. The primary combustible fuel load in the area is the cables themselves and storage of transient combustibles is limited due to a sump and abandoned acid/caustic tanks located in the area.

The licensee also stated that the primary ignition sources in the area are the Turbine Building Closed Cooling Water Pumps and USS 1A1 and its associated transformer. The licensee stated that the Turbine Building Closed Cooling Water Pumps contain less than 5 gallons of oil, are enclosed in metal casings, and are located approximately 13 feet from the cable tray containing the credited and redundant cables. Additionally, USS 1A1 and its associated transformer are located approximately 8 feet directly below some of the credited cables for Diesel Generator #2, however, the redundant cables are approximately 25 feet from this portion of the credited cables.

In the unlikely event that a fire does occur and damages the credited and redundant cables, OMA #5 is available to manually control Emergency Diesel Generator #2 from LSP–DG2. The licensee also stated that they have assumed a 10-minute diagnosis period and that the required time to perform the action is 14 minutes while the time available is 45 minutes, which provides a 21-minute margin.

3.17.4.4 OMA #6—Manually Reclose Feeder Breaker MCC 1B32 at USS 1B3

In order for OMA #6 to be necessary, power to USS 1B3 or the 1B 4160V switchgear would have to be lost due to a fire. The licensee stated that these cables are located in the same tray with additional cables and are generally located at least 15 feet above the floor. The primary combustible fuel load in the area is the cables themselves and storage of transient combustibles is limited due to a sump and abandoned acid/caustic tanks located in the area.

The licensee also stated that the primary ignition sources in the area near the cable trays are the Turbine Building Closed Cooling Water Pumps and USS 1A1 and its associated transformer (4160V to 480V transformer). However, the Turbine Building Closed Cooling Water Pumps contain less than 5 gallons of oil and are enclosed in metal casings and the cable tray containing the cables is approximately 13 feet from the top of the pumps/motors. The top of USS 1A1 and its associated transformer are located approximately 30 feet diagonally from the credited cables and approximately 15 feet diagonally from the redundant cables. Additionally, there is a concrete ceiling beam, with a water curtain sprinkler system attached, which would provide some shielding for the cables from potential products of combustion generated by this ignition source. Sprinkler heads are also located in a ceiling pocket between the concrete ceiling beam and the USS 1A1 and transformer.

In the unlikely event that a fire does occur and causes a loss of power to USS 1B3 or loss of the 1B 4160V switchgear, OMA #6 is available to manually re-close Feeder Breaker MCC1B32 at USS 1B3 due to an under voltage trip. The licensee also stated that they have assumed a 10-minute diagnosis period and that the required time to perform the action is 6 minutes while the time available is 45 minutes, which provides a 29-minute margin.

3.17.4.5 OMA #12—Establish CRD Flow to Reactor

In order for OMA #12 to be necessary, a loss of instrument air to the CRD flow control valve would have to occur due to fire damage. The licensee stated that although the USSs powering the air compressors are located 35 feet apart from each other, the power cables are located in the same cable trays for at least 45 feet and that the normal CRD flow control valve is a single component without a redundant counterpart. Because of this, a manual bypass is provided to maintain flow around the CRD flow control valves that fail closed upon loss of instrument air or control cable damage.

In the unlikely event that a fire does occur and causes the normal flow control valve to be unavailable due to a loss of instrument air or cable damage, OMA #12 is available to manually open V–15–237, throttle V–15–30 while monitoring flow at FI–225–2, and close V–15–52 to establish CRD flow to the reactor. Furthermore, OMA #12 would only be necessary if the Isolation Condenser/CRD systems are utilized for hot shutdown. If OMA #12 becomes necessary, the licensee stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 15 minutes, while the time available is 204 minutes, which provides a 159-minute margin.

3.17.5 Conclusion

Given the limited amount of combustible materials, ignition sources and the volume of the space, it is unlikely that a fire would occur and go undetected or unsuppressed by the suppression systems noted above, or personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this zone, combined with the ability of OMAs #1, #3, #5, #6, and #12 to manipulate the plant in the event of a fire that damages safe shutdown equipment, provides adequate assurance that safe shutdown capability is maintained.

3.18 TB–FZ–11E Turbine Bldg. Condenser Bay Area Elev. 0′-0″

3.18.1 Fire Prevention

The licensee has classified the fire loading in this fire zone as low. The licensee also stated that this Fire Zone is procedurally controlled as a transient combustible free area while the plant is operating. This area is a high radiation area during plant operation and is not normally accessed. The zone has an administrative fire loading limit of less than 30 minutes as determined by the ASTM E119 time-temperature curve. The major combustibles in this area are cable insulation (approximately 40% of loading) and plastic (approximately 59% of loading). Plastic grating, which is the largest plastic material in this zone, is dispersed throughout this fire zone (not concentrated) and has a low flame spread (less than 25).

3.18.2 Detection, Control, and Extinguishment

The licensee stated that a closed head automatic sprinkler and spray systems protect the south end basement area and the hydrogen seal oil unit. An exemption was granted from the requirements of Appendix R Section III.G.2 in Safety Evaluations (SEs) dated March 24, 1986, and June 25, 1990, for not having fixed fire detection in this area. The primary basis for this exemption is the presence of the automatic wet pipe sprinkler system, low fire loading and the 1-hour barrier protection for safe shutdown circuits. Also, the flow alarm will notify the control room of any sprinkler system activation. Since the Condenser Bay is procedurally controlled as a transient combustible free area in procedure OP–AA–201–009 while the plant is operating. Extinguishment of a fire will be accomplished by the automatic fixed suppression system and the plant fire brigade. A closed head automatic sprinkler system was recently expanded to provide fire suppression over the cables in cable trays in the northeast side of the condenser bay.

3.18.3 Preservation of Safe Shutdown Capability

The licensee stated that TB–FZ–11E has a ceiling height of at least 40′ and an approximate floor area of 26427 square feet so it is unlikely that smoke and heat would accumulate at the height of the safe shutdown equipment and cause a failure due to fire damage.

3.18.4 OMAs Credited for a Fire in This Zone

3.18.4.1 OMA #1—Manually Trip 4160V 1D Breakers and Control USS 1B2 & 1B3 Breakers Locally at LSP–1D

In order for OMA #1 to be necessary, the credited and redundant cables would have to be damaged due to a fire. The licensee stated that these cables are located in the same tray with additional cables and are generally located approximately 40 feet above the floor. With the exception of the cables themselves, there are no other ignition sources or combustibles located near the cables.

In the unlikely event that a fire does occur and damages the credited and redundant cables, OMA #1 is available to manually trip the 4160V 1D breakers and control USS 1B2 and the 1B3 480V breakers locally at LSP–1D. The licensee also stated that they have assumed a 10-minute diagnosis period and that the required time to perform the action is 19 minutes while the time available is 45 minutes, which provides a 16-minute margin.

3.18.4.2 OMA #2—Read Condensate Storage Tank Local Level Indicator LI–424–993

In order for OMA #2 to be necessary, damage to the primary CST level indicator (5F–27) cable would have to occur due to a fire. The licensee stated that this cable is located approximately 16 feet above the floor. With the exception of the cables themselves, there are no other ignition sources or combustibles located near the cables.

In the unlikely event that a fire does occur and damages the primary CST level indicator, OMA #2 is available to locally read CST level at the local indicator, LI–424–993, located at the CST. The licensee also stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 7 minutes while the time available is 73 minutes, which provides a 36-minute margin.

3.18.4.3 OMA #3—Manually Control 1B3M Breaker at LSP–1B3

In order for OMA #3 to be necessary, the credited and redundant cables would have to be damaged due to a fire. The licensee stated that these cables are located in the same tray with additional cables and are generally located approximately 40 feet above the floor. With the exception of the cables themselves, there are no other ignition sources or combustibles located near the cables.

In the unlikely event that a fire does occur and damages the credited and redundant cables, OMA #3 is available to manually control the 1B3M breaker locally from LSP–1B3. The licensee also stated that they have assumed a 10-minute diagnosis period and that the required time to perform the action is 10 minutes while the time available is 45 minutes, which provides a 25-minute margin.

3.18.4.4 OMA #4—Manually Control Condensate Transfer Pump 1–2 From LSP–1B32

In order for OMA #4 to be necessary, damage to the credited and redundant cables for the Condensate Transfer Pump 1–2 would have to be damaged due to a fire. The licensee stated that these cables are located in the same tray with additional cables and are generally located approximately 18 feet above the floor. With the exception of the cables themselves, there are no other ignition sources or combustibles located near the cables.

In the unlikely event that a fire does occur and damages the credited and redundant cables, OMA #4 is available to manually control Condensate Transfer Pump 1–2 locally from LSP–1B32. The licensee also stated that they have assumed a 10-minute diagnosis period and that the required time to perform the action is 10 minutes while the time available is 45 minutes, which provides a 25-minute margin.

3.18.4.5 OMA #5—Manually Control Diesel Generator #2 from LSP–DG2

In order for OMA #5 to be necessary, damage to the credited and redundant cables would have to occur due to a fire. The licensee stated that the credited and redundant cables are located in separate cable trays separated by a horizontal distance of at least 90 feet. The licensee also stated that there are no ignition sources near the redundant cables and that the primary ignition sources that could affect the credited cables are the moisture separator drain pumps and area sump pumps, which are located on the floor approximately 20 feet horizontally and 17 feet vertically from the credited cables.

In the unlikely event that a fire does occur and damages the credited and redundant cables, OMA #5 is available to manually control Emergency Diesel Generator #2 from LSP–DG2. The licensee also stated that they have assumed a 10-minute diagnosis period and that the required time to perform the action is 14 minutes while the time available is 45 minutes, which provides a 21-minute margin.

3.18.4.6 OMA #6—Manually Reclose Feeder Breaker MCC 1B32 at USS 1B3

In order for OMA #6 to be necessary, power to USS 1B3 or the 1B 4160V switchgear would have to be lost due to a fire. The licensee stated that the cables that could cause the loss of USS 1B3 are located in the same tray with additional cables and are generally located approximately 40 feet above the floor. With the exception of the cables themselves, there are no other ignition sources or combustibles located near the cables.

In the unlikely event that a fire does occur and causes a loss of power to USS 1B3 or loss of the 1B 4160V switchgear, OMA #6 is available to manually re-close Feeder Breaker MCC 1B32 at USS 1B3 due to an under voltage trip. The licensee also stated that they have assumed a 10-minute diagnosis period and that the required time to perform the action is 6 minutes while the time available is 45 minutes, which provides a 29-minute margin.

3.18.4.7 OMA #12—Establish CRD Flow to Reactor

In order for OMA #12 to be necessary, a loss of instrument air to the CRD flow control valve would have to occur due to fire damage. The licensee stated that although the USSs powering the air compressors are located 35 feet apart from each other, the power cables are located in the same cable trays for at least 45 feet and that the normal CRD flow control valve is a single component without a redundant counterpart. Because of this, a manual bypass is provided to maintain flow around the CRD flow control valves that fail closed upon loss of instrument air or control cable damage.

In the unlikely event that a fire does occur and causes the normal flow control valve to be unavailable due to a loss of instrument air or cable damage, OMA #12 is available to manually open V–15–237, throttle V–15–30 while monitoring flow at FI–225–2, and close V–15–52 to establish CRD flow to the reactor. Furthermore, OMA #12 would only be necessary if the Isolation Condenser/CRD systems are utilized for hot shutdown. If OMA #12 becomes necessary, the licensee stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 15 minutes, while the time available is 204 minutes, which provides a 159-minute margin.

3.18.4.8 OMA #16—Manually Trip Rx Recirculation Pumps at 4160V Switchgear

In order for OMA #16 to be necessary, the credited and redundant cables would have to be damaged due to a fire. The licensee stated that the credited cables for tripping the recirculation pumps are located in the same tray, or adjacent tray, with additional cables and are generally located approximately 40 feet above the floor. With the exception of the cables themselves, there are no other ignition sources or combustibles located near the cables.

In the unlikely event that a fire does occur and damages the credited and redundant cables, OMA #16 is available to manually trip Reactor Recirculation Pumps ("A," "B," "C," "D" and "E") 4160V Switchgear 1A and 1B. The licensee also stated that they have assumed a 10-minute diagnosis period and that the required time to perform the action is 13 minutes while the time available is 30 minutes, which provides a 7-minute margin.

3.18.5 Conclusion

Given the limited amount of combustible materials, ignition sources, and large volume of the space, it is unlikely that a fire would occur and go undetected or unsuppressed by the suppression system noted above or personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this zone, combined with the ability of OMAs #1, #2, #3, #4, #5, #6, #12, and #16 to manipulate the plant in the event of a fire that damages safe shutdown equipment, provides adequate assurance that safe shutdown capability is maintained.

3.19 TB–FZ–11F Turbine Bldg. Feedwater Pump Room Elev. 0′-0″ & 3′-6″

3.19.1 Fire Prevention

The licensee has classified the fire loading in this fire zone as low. The licensee also stated that this area has an administrative fire loading limit of less than 30 minutes as determined by the ASTM E119 time-temperature curve. The major combustible load consists of cable insulation (approximately 15% of loading), lubricating oil (approximately 39% of loading), rubber (approximately 21% of loading) and plastics (approximately 17% of loading). The licensee states that the majority of the combustible loading attributed to rubber and plastic was due to the storage of hoses which are now no longer in the area.

3.19.2 Detection, Control, and Extinguishment

The licensee stated that TB–FZ–11F has an area-wide thermal fire detection system. Extinguishment of the fire will be accomplished by the plant fire brigade.

3.19.3 Preservation of Safe Shutdown Capability

The licensee stated that TB–FZ–11F has a ceiling height of approximately 16′ in approximately 70% of the area and approximately 19′-6″ in the remainder of the area. With an approximate floor area of 5,650 square feet, it is unlikely that smoke and heat would accumulate at the height of the safe shutdown equipment and cause a failure due to fire damage.

3.19.4 OMAs Credited for a Fire in This Area

3.19.4.1 OMA #7—Align Fire Water to Isolation Condenser

In order for OMA #7 to be necessary, the loss of the "B" Train of power would have to occur due to fire damage. The loss of the "B" Train of power is attributed to the fact that the 125 VDC control power could be lost to the 1D 4160V Switchgear or the 1D 4160V main breaker could trip due to cables that traverse through this fire zone. The licensee stated that the cables for the 125 VDC control power and the control circuit for the 1D main breaker are contained in separate conduits but are routed within approximately 6 inches of each other in a portion of this zone and that the conduits are located approximately 5 to 18 feet above the floor. Additionally, the licensee stated that the 125 VDC control cable leaves the zone through the east wall into Fire Zone RB–FZ–1F2 while the 1D main breaker control cable continues along the east wall near the floor through the remaining portion of this zone and rises up to approximately 6 feet from the floor where it exits the zone.

The licensee also stated that the primary ignition sources in the area are the feedwater pumps and motors, which are located approximately 10 feet from the conduits. Transient combustibles are controlled by administrative procedures and although the accumulation of transient combustibles along the east wall of the area could potentially impact the cables, the majority of the conduits are routed such that it would be unlikely that a fire in this area would adversely impact the cables in the conduit. The "A" train of power is credited and available for this fire zone. The redundant cable, "C" battery, "C" Distribution center, *etc.* are not located in this fire zone.

In the unlikely event that a fire does occur and damages the credited and redundant cables, OMA #7 is available

to manually open V–9–2099 and V–11–49 and close V–11–63 and V–11–41 to align the fire water system for make-up water to Isolation Condenser "B" since there is no power ("B" Train) available to the Condensate Transfer System. The licensee also stated that they have assumed a 10-minute diagnosis period and that the required time to perform the action is 13 minutes while the time available is 45 minutes, which provides a 22-minute margin.

3.19.4.2 OMA #12—Establish CRD Flow to Reactor

In order for OMA #12 to be necessary, a loss of instrument air to the CRD flow control valve would have to occur due to fire damage. The licensee stated that although the USSs powering the air compressors are located 35 feet apart from each other, the power cables are located in the same cable trays for at least 45 feet and that the normal CRD flow control valve is a single component without a redundant counterpart. Because of this, a manual bypass is provided to maintain flow around the CRD flow control valves that fail closed upon loss of instrument air or control cable damage.

In the unlikely event that a fire does occur and causes the normal flow control valve to be unavailable due to a loss of instrument air or cable damage, OMA #12 is available to manually open V–15–237, throttle V–15–30 while monitoring flow at FI–225–2, and close V–15–52 to establish CRD flow to the reactor. Furthermore, OMA #12 would only be necessary if the Isolation Condenser/CRD systems are utilized for hot shutdown. If OMA #12 becomes necessary, the licensee stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 15 minutes, while the time available is 204 minutes, which provides a 159-minute margin.

3.19.5 Conclusion

Given the limited amount of combustible materials, ignition sources, and large volume of the space, it is unlikely that a fire would occur and go undetected or unsuppressed by the thermal detection system noted above or personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this zone, combined with the ability of OMAs #7 and #12 to manipulate the plant in the event of a fire that damages safe shutdown equipment, provides adequate assurance that safe shutdown capability is maintained.

3.20 TB–FZ–11H Turbine Bldg. Demineralizer Tank and Steam Jet Air Ejector Area Elev. 3′-6″ & 23′-6″

3.20.1 Fire Prevention

The licensee has classified the fire loading in this fire zone as low. The licensee also stated that this area has an administrative fire loading limit of less than 30 minutes as determined by the ASTM E119 time-temperature curve. The major combustibles are cable insulation (approximately 23% of loading), ladders and other miscellaneous plastics (approximately 55% of loading) and miscellaneous ordinary combustibles.

3.20.2 Detection, Control, and Extinguishment

The licensee stated that TB–FZ–11H has a partial area thermal fire detector system. The system alarms locally and in the control room. Manual extinguishment of fire will be accomplished by the plant fire brigade.

3.20.3 Preservation of Safe Shutdown Capability

The licensee stated that TB–FZ–11H has a ceiling height of approximately 7′-0″, measured at the 3′-6″ elevation, and approximately 19′-0″, measured at the 23′-6″ elevation with an approximate floor area of 3,944 square feet and 4,366 square feet, respectively, so it is unlikely that smoke and heat would accumulate at the height of the safe shutdown equipment and cause a failure due to fire damage.

3.20.4 OMAs Credited for a Fire in This Area

3.20.4.1 OMA #7—Align Fire Water to Isolation Condenser

In order for OMA #7 to be necessary, the loss of the "B" Train of power would have to occur due to fire damage. The loss of the "B" Train of power is attributed to the fact that the 125 VDC control power could be lost to the 1D 4160V Switchgear or the 1D 4160V main breaker could trip due to cables that traverse through this fire zone. The licensee stated that the cables for the 125 VDC control power and the control circuit for the 1D main breaker are contained in separate conduits but are routed within approximately 6 inches of each other in a portion of this zone and that the conduits are located approximately 5 to 6 feet above the floor. Additionally, the licensee stated that the total length of the conduits in this area is approximately 20 feet.

The licensee also stated that there are no ignition sources in the area and that combustible loading is limited since the area is a stairway area. Transient combustibles are controlled by administrative procedures and although the accumulation of transient combustibles below the conduits could potentially impact the cables, it is unlikely because the area is a stairway and part of the floor is blocked by a large ventilation duct. The "A" train of power is credited and available for this fire zone. The redundant cable, "C" battery, "C" Distribution center, *etc.* are not located in this fire zone.

In the unlikely event that a fire does occur and damages the credited and redundant cables, OMA #7 is available to manually open V–9–2099 and V–11–49 and close V–11–63 and V–11–41 to align the fire water system for make-up water to Isolation Condenser "B" since there is no power ("B" Train) available to the Condensate Transfer System. The licensee also stated that they have assumed a 10-minute diagnosis period and that the required time to perform the action is 13 minutes while the time available is 45 minutes, which provides a 22-minute margin.

3.20.4.2 OMA #12—Establish CRD Flow to Reactor

In order for OMA #12 to be necessary, a loss of instrument air to the CRD flow control valve would have to occur due to fire damage. The licensee stated that although the USSs powering the air compressors are located 35 feet apart from each other, the power cables are located in the same cable trays for at least 45 feet and that the normal CRD flow control valve is a single component without a redundant counterpart. Because of this, a manual bypass is provided to maintain flow around the CRD flow control valves that fail closed upon loss of instrument air or control cable damage.

In the unlikely event that a fire does occur and causes the normal flow control valve to be unavailable due to a loss of instrument air or cable damage, OMA #12 is available to manually open V–15–237, throttle V–15–30 while monitoring flow at FI–225–2, and close V–15–52 to establish CRD flow to the reactor. Furthermore, OMA #12 would only be necessary if the Isolation Condenser/CRD systems are utilized for hot shutdown. If OMA #12 becomes necessary, the licensee stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 15 minutes, while the time available is 204 minutes, which provides a 159-minute margin.

3.20.5 Conclusion

Given the limited amount of combustible materials, ignition sources, and large volume of the space, it is

unlikely that a fire would occur and go undetected or unsuppressed by the thermal detection system noted above or personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this zone, combined with the ability of OMAs #7 and #12 to manipulate the plant in the event of a fire that damages safe shutdown equipment, provides adequate assurance that safe shutdown capability is maintained.

3.21 Feasibility of the Operator Manual Actions

This analysis postulates that OMAs may, in some scenarios, be needed to assure safe shutdown capability in addition to the traditional fire protection features described above. NUREG–1852, "Demonstrating the Feasibility and Reliability of Operator Manual Actions in Response to Fire," provides criteria and associated technical bases for evaluating the feasibility and reliability of post-fire OMAs in nuclear power plants. However, Exelon states that the OMAs identified in its Phase 1 request were previously found acceptable in fire protection SEs dated March 24, 1986 and June 25, 1990, and, therefore, do not need to meet the reliability criteria specified in NUREG–1852, "Demonstrating the Feasibility and Reliability of Operator Manual Actions in Response to Fire," dated October 2007. The NRC staff finds that the SEs referenced by the licensee, in addition to the feasibility review contained in this SE, provide the necessary information to determine the feasibility and reliability of the OMAs.

3.21.1 Bases for Establishing Feasibility

Using NUREG–1852, the NRC staff has evaluated the feasibility review provided by the licensee in the April 2, 2010, Response to Request for Additional Information. For an OMA to be considered feasible, the required actions must be proceduralized, any equipment that is needed to implement the OMA is available, the environments in which the OMA is to be performed must permit the action, and the time taken to diagnose the need for the OMA and implement it (time required) must be less than the time in which the OMA must be completed (time available).

3.21.2 Feasibility

The feasibility review provided by the licensee documents that procedures are in place, in the form of fire response procedures, to ensure that clear and accessible instructions on how to perform the manual actions are available to the operators. All of the requested OMAs are directed by plant procedures, and the operators are trained in the use of the procedures. Specifically, the licensee stated that abnormal operating procedure ABN–29, "Plant Fires," is entered whenever a fire or indication of a fire occurs on the main fire alarm panel in the control room or at any local fire alarm panel. In addition to dispatching a radio-equipped operator to the alarming location, ABN–29 also directs that the fire brigade be dispatched whenever a fire suppression system has actuated (sprinkler, deluge, Halon, CO_2) or a fire is confirmed. In addition, the licensee stated that ABN–29 directs immediate entry into the FSP for the affected fire area as soon as the existence of a fire is confirmed. The licensee states that the following indications or symptoms are considered examples of a confirmed fire:

- Fire detection alarm and equipment malfunction indication or alarms within the same area;
- Fire pump start and either sprinkler flow alarm or deluge flow alarm;
- Gaseous suppression system actuation;
- Report from the field of an actual smoke condition or actual fire condition; or
- Fire detection alarm with follow up confirmation by field operator.

Entering the FSP means that the operator will review the FSP, identify equipment that could be affected, identify equipment that will be available, monitor plant equipment from the control room and communicate with the fire brigade leader. Based on the symptoms received in the control room and the feedback from the fire brigade leader, the operator will decide using the procedure what mitigating actions are necessary. In the event that a plant shutdown has occurred before the FSP is entered, the operator will still enter the FSP based on the fire and initiate the OMAs as appropriate. OMAs that are considered "prompt" (*i.e.,* those that must be done within 45 minutes or less) are identified in both ABN–29 and in the applicable FSPs as an item requiring immediate attention. The operators are trained to perform prompt actions first and prioritize them based upon existing plant conditions. The FSPs are based on the worst-case loss considerations by assuming all fire damage occurs instantaneously and thus all operator manual actions will be required. The use of the EOPs in conjunction with the applicable FSPs will permit the use of any mitigating system available first, and if a desired system is not available, the FSP provides a contingency action to restore the system or provide another means to perform the function. Operator training, including simulator demonstrations and plant walk downs, has been performed to ensure consistency in operator and team response for each OMA.

The licensee evaluated several potential environmental concerns, such as radiation levels, temperature/humidity conditions and the ventilation configuration and fire effects that the operators may encounter during certain emergency scenarios. The licensee's feasibility review concluded that the operators performing the manual actions would not be exposed to adverse or untenable conditions during any particular operator manual action procedure or during the time to perform the procedure. The licensee states that OMAs required for achieving and maintaining hot shutdown conditions are not impacted by environmental conditions associated with fires in the fire area identified in the request. Each of the safe shutdown calculations that provide the technical basis for the FSPs contains a timeline for operator actions for the specific fire area. In addition, the licensee stated that the equipment needed to implement OMAs remains available and the fire areas remain accessible during or following the event.

In one instance, OMA 12, the licensee identified that an operator may need to re-enter Fire Zone RB–FZ–1E (*i.e.,* perform part of an OMA in the affected fire zone) to manually manipulate three 2-inch CRD System valves V–15–237, V–15–30, and V–15–52 that are physically located within 4 feet of each other within the spray area of the automatic localized fixed water spray deluge system installed in this fire zone. An exemption was granted in SE dated June 25, 1990, for not providing either additional separation from in-situ combustibles or protection for CRD System valve V–15–30. This exemption was granted on the basis that: (1) There are 204 minutes following a scram before this action would need to be completed and this action and only requires 15 minutes to complete; (2) any fires in that area are unlikely to render the valve inoperable; (3) the valves are within the spray area of an automatic fixed water spray deluge system. Since valves V–15–237, V–15–52, and V–15–30 are physically within 4 feet of each other the NRC staff considers the technical basis of the exemption to be equally valid for these two additional valves.

The licensee's analysis demonstrates that, for the expected scenarios, the OMAs can be diagnosed and executed

within the amount of time available to complete them. The licensee's analysis also demonstrates that various factors, as discussed above, have been considered to address uncertainties in estimating the time available. Therefore, the OMAs included in this review are feasible because there is adequate time available for the operator to perform the required OMAs to achieve and maintain hot shutdown following a postulated fire event. Table 2 summarizes the "required" versus "available" times for each OMA. The licensee has included any diagnosis time as part of the required time for performing a particular action. Where an action has multiple times or contingencies associated with the "available" completion time, the lesser time is used. This approach is considered to represent a conservative approach to analyzing the timelines associated with each of the OMAs with regard to the feasibility and reliability of the actions included in this exemption. The licensee provided a discussion of the times and circumstances associated with each of the actions in their March 3, 2009, and April 2, 2010, correspondence.

TABLE 2

OMA	Fire area/zone of fire origin	OMA location	Required time (min)	Available time (min)	Margin (min)
1	TB–FA–26, TB–FZ–11B, TB–FZ–11E	TB–FA–3B	29	45	16
	TB–FZ–11C, TB–FZ–11D		34	45	11
2	OB–FA–9, OB–FZ–6A, OB–FZ–8C, TB–FZ–11B, TB–FZ–11E.	Yard	37	73	36
3	TB–FA–26, TB–FZ–11B, TB–FZ–11C, TB–FZ–11D, TB–FZ–11E.	CW–FA–14	20	45	25
4	TB–FZ–11B, TB–FZ–11E	MT–FA–12	20	45	25
5	TB–FZ–11D, TB–FZ–11E	DG–FA–17	24	45	21
6	TB–FA–26, TB–FZ–11B, TB–FZ–11C, TB–FZ–11D, TB–FZ–11E.	CW–FA–14	16	45	29
7	OB–FZ–6B, OB–FZ–8A, OB–FZ–8B, OB–FZ–8C, TB–FZ–11F, TB–FZ–11H, CW–FA–14.	RB–FZ–1E	23	45	22
8	OB–FZ–8C	OB–FZ–6A	38	60	22
9	OB–FZ–6A	OB–FZ–6B	43	180	137
11	RB–FZ–1E, RB–FZ–1G	RB–FZ–1D	130	204	74
12	RB–FZ–1D, RB–FZ–1F5, TB–FA–3A, OB–FZ–6A, OB–FZ–6B, OB–FZ–8A, OB–FZ–8B, OB–FZ–8C, OB–FA–9, TB–FA–26, TB–FZ–11B, TB–FZ–11C, TB–FZ–11D, TB–FZ–11E, TB–FZ–11F, TB–FZ–11H, CW–FA–14.	RB–FZ–1E	45	204	159
	OB–FZ–10A		48	204	156
	RB–FZ–1E, RB–FZ–1G		130	204	74
13	RB–FZ–1F3	RB–FZ–1F2	65	204	139
16	TB–FZ–11B, TB–FZ–11E, OB–FZ–8C	TB–FZ–11C	23	30	7

The NRC staff reviewed the required OMA completion time limits versus the time before the action becomes critical to safely shutting down the unit as presented in the feasibility analyses. The NRC staff recognizes that, in some cases, the time required neared the time available for an OMA. The NRC staff, however, also recognizes that there are conservatisms built in to these time estimates such as adding in the entire time assumed to diagnose the need for an OMA where in reality, the actual time take would likely be less.

The NRC staff notes that, in one case, an OMA must be completed within 30 minutes (*i.e.,* it is considered a prompt action). This action is identified as OMA #16 and requires an operator to manually trip the Reactor Recirculation Pumps "A," "B," "C," "D" and "E" at the 4160V Switchgear 1A and 1B. The action may be required as a result of fire in OB–FZ–8C, TB–FZ–11B, or TB–FZ–11E. The symptom for this action is the inability to trip the Recirculation Pumps from the control room and this is detected using the associated pump breaker indicating lights, alarms and flow indications. The Fire Support Procedures direct the operator to trip the pumps using the pump control switches or the Recirculation Pump Trip circuitry (two trip coils for pumps). If both of these methods fail on one or more pumps, the guidance is given to trip the pumps from the 4160V Switchgear 1A and 1B located outside the control room in Fire Area TB–FZ–11C. Only one operator would be required and it would take approximately 13 minutes for access to the area and to perform the action of tripping the breakers. Given the low complexity of this action, the NRC staff finds that there is a sufficient amount of time available to complete the proposed OMAs.

3.22 Summary of Defense-in-Depth and Operator Manual Actions

In summary, the defense-in-depth concept for a fire in the fire areas discussed above provides a level of safety that limits the occurrence of fires and results in rapid detection, control and extinguishment of fires that do occur and the protection of structures, systems, and components important to safety. It should be understood that the OMAs are a fall back in the unlikely event that the fire protection defense-in-depth features are insufficient. In most cases, there is no credible fire scenario that would necessitate the performance of these OMAs. As discussed above, the licensee has provided preventative and protective measures in addition to feasible and reliable OMAs that together demonstrate the licensee's ability to preserve or maintain safe shutdown capability in the event of a fire in the analyzed fire areas.

3.23 Authorized by Law

This exemption would allow Oyster Creek to rely on OMAs, in conjunction with the other installed fire protection features, to ensure that at least one means of achieving and maintaining hot shutdown remains available during and following a postulated fire event, as part of its FPP, in lieu of meeting the requirements specified in III.G.2 for a fire in the analyzed fire areas. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50. The NRC staff has determined that granting of this exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

3.24 No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR part 50, Appendix R, Section III.G is to ensure that at least one means of achieving and maintaining hot shutdown remains available during and following a postulated fire event. Based on the above evaluation, the NRC staff finds that the plant features, as described in the March 3, 2009, submittal, as supplemented by letter dated April 2, 2010, should limit the occurrence and impacts of any fire that may occur. This, combined with the ability of the OMAs to place and maintain the plant in a safe condition in the event of a fire that does damage safe shutdown equipment, provides adequate protection of public health and safety. Therefore, there is no undue risk to public health and safety.

3.25 Consistent With Common Defense and Security

This exemption would allow Oyster Creek to credit the use of the specific OMAs, in conjunction with the other installed fire protection features, in response to a fire in the analyzed fire areas, discussed above, in lieu of meeting the requirements specified in III.G.2. This change, to the operation of the plant, has no relation to security issues nor does it diminish the level of safety from what was intended by the requirements of III.G.2. Therefore, the common defense and security is not diminished by this exemption.

3.26 Special Circumstances

One of the special circumstances described in 10 CFR 50.12(a)(2)(ii) is that the application of the regulation is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR part 50, Appendix R, Section III.G is to ensure that at least one means of achieving and maintaining hot shutdown remains available during and following a postulated fire event. While the licensee does not comply with the explicit requirements of III.G.2, specifically, they do meet the underlying purpose of 10 CFR part 50, Appendix R, and Section III.G as a whole. Therefore, special circumstances exist that warrant the issuance of this exemption as required by 10 CFR 50.12(a)(2)(ii).

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, is consistent with the common defense and security and that special circumstances are present to warrant issuance of the exemption. Therefore, the Commission hereby grants Exelon an exemption from the requirements of Section III.G.2 of Appendix R of 10 CFR part 50, to utilize the OMAs discussed above at Oyster Creek.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (74 FR 36274).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of March 2011.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–8405 Filed 4–7–11; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2009–0345]

Final Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance and availability of Regulatory Guide (RG) 5.79, "Protection of Safeguards Information."

FOR FURTHER INFORMATION CONTACT: Robert Norman, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–2278 or e-mail: *Robert.Norman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or Commission) is issuing a new guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Regulatory Guide (RG) 5.79 "Protection of Safeguards Information," was issued August 6, 2009 as a Draft Regulatory Guide (DG) for public comment under the temporary identification number DG–5034. RG 5.79 is a new regulatory guide which describes methods the staff of the NRC consider acceptable to implement the general performance requirements specified in Title 10, Section 73.21(a)(i) and (ii), of the Code of Federal Regulations, "Protection of Safeguards Information: Performance Requirements," (10 CFR 73.21) that establish, implement, and maintain an information protection system that includes the applicable measures for safeguards information (SGI) specified in 10 CFR 73.22, "Protection of Safeguards Information: Specific Requirements," or 10 CFR 73.23, "Protection of Safeguards Information—Modified Handling: Specific Requirements." This guide applies to all licensees, certificate holders, applicants, or other persons who produce, receive, or acquire SGI (including SGI with the designation or marking: "Safeguards Information—Modified Handling" (SGI–M)).

The guidance and criteria contained in this document pertain to the protection of SGI as defined in 10 CFR part 73, "Physical Protection of Plants and Materials." It is intended to assist licensees and other persons who produce, receive, or acquire SGI to establish an information protection system that addresses (1) information to be protected, (2) conditions for access, (3) protection while in use or storage, (4) preparing and marking documents or other matter, (5) reproduction of matter containing SGI, (6) external transmission of documents and material, (7) processing SGI on electronic systems, (8) removal from the SGI category, and (9) destruction of matter containing SGI.

10 CFR 73.21 "Protection of Safeguards Information: Performance Requirements," requires, in part, that

each licensee, certificate holder, applicant, or other person who produces, receives, or acquires Safeguards Information (SGI) shall ensure that it is protected against unauthorized disclosure.

II. Further Information

On August 6, 2009, a **Federal Register** Notice was issued (74 FR 39343) announcing the availability of DG–5034 for public comment period. The public comment period closed on October 1, 2009. The staff's responses to the public comments received are available through the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession Number ML103270225. The Regulatory Analysis for this Regulatory Guide is available in ADAMS under Accession No. ML103270227. Electronic copies of RG 5.79 are available through the NRC's public Web site under "Regulatory Guides" at *http://www.nrc.gov/reading-rm/doc-collections/reg-guides/.*

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland this 1st day of April 2011.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–8415 Filed 4–7–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–313; NRC–2011–0076]

Entergy Operations, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has granted the request of Entergy Operations, Inc. (the licensee), to withdraw its application dated August 24, 2010, and supplemented by letters dated November 12, 2010, and February 28, 2011, for a proposed amendment to Facility Operating License No. DPR–51 for the Arkansas Nuclear One, Unit 1, located in Pope County, Arkansas.

The proposed amendment would have revised several Technical Specifications (TSs) to permit a greater time period for one of the two required reactor coolant system cooling loops (commonly known as a Decay Heat Removal loop) to be inoperable. The affected TSs are applicable in lower Modes of Operation, Modes 4, 5, and 6.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 2, 2010 (75 FR 67401). However, by letter dated March 24, 2011, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 24, 2010, the supplemental letters dated November 12, 2010, and February 28, 2011, and the licensee's letter dated March 24, 2011, which withdrew the application for license amendment (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML102371014, ML103160175, ML110590738, and ML110840216, respectively). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland this 30th day of March 2011.

For the Nuclear Regulatory Commission.

Nageswaran Kalyanam,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–8417 Filed 4–7–11; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64173; File No. SR–CHX–2011–02]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Alter the Fee Schedule To Repeal the Trade Processing Fee Credit Paid to Institutional Brokers

April 4, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 24, 2011, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. CHX has filed the proposal pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its Schedule of Participant Fees and Assessments (the "Fee Schedule"), effective March 24, 2011, to alter its schedule of fees for Participants to repeal the Trade Processing Fee credit currently paid to institutional brokers. The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm,* and in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this filing, the Exchange is proposing to alter its schedule of fees for Participants to repeal the Trade Processing Fee credit currently paid to institutional brokers. The Trade Processing Fee credit is a credit paid to CHX institutional brokers based upon the amount of Trade Processing Fees [5] collected by the Exchange from the parties to a non-tape, clearing-only submission.

Currently, the Fee Schedule provides for a Trade Processing Fee credit of 4% per side of the Trade Processing Fees received by the Exchange paid to the originating broker, plus 12% of the Trade Processing Fees received by the Exchange paid to the broker of credit, for the portion(s) of the transaction handled by the broker of credit. The Exchange proposes to eliminate the Trade Processing Fee credit currently paid to institutional brokers while retaining the Trade Processing Fee charge to Participants for this service. The Exchange plans, under a different rule filing, to propose rules relating to non-tape, clearing-only submissions and does not believe that it is appropriate to consider providing credits associated with Trade Processing Fees until these rules have been submitted to, and approved by, the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [6] in general, and furthers the objectives of Section 6(b)(4) of the Act [7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members. The Exchange plans, under a different rule filing, to propose rules relating to non-tape, clearing-only submissions and does not believe that it is appropriate to consider providing credits associated with Trade Processing Fees until these rules have been submitted to, and approved by, the Commission.

[5] Section E.7. of the CHX Schedule of Fees and Assessments.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [8] and subparagraph (f)(2) of Rule 19b–4 thereunder [9] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CHX–2011–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2011–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–CHX–2011–02 and should be submitted on or before April 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8373 Filed 4–7–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64174; File No. SR–NASDAQ–2011–042]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of the Trading Pause for Individual Stocks Contained in the Standard & Poor's 500 Index, Russell 1000 Index, and Specified Exchange Traded Products That Experience a Price Change of 10% or More During a Five-Minute Period

April 4, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2011, The NASDAQ Stock Market LLC ("Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period of the trading pause for individual stocks contained in the Standard & Poor's 500 Index, Russell 1000 Index, and specified Exchange Traded Products that experience a price change of 10% or more during a five-minute period, so that the pilot will now expire the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

4120. Trading Halts

(a) Authority To Initiate Trading Halts or Pauses

In circumstances in which Nasdaq deems it necessary to protect investors and the public interest, Nasdaq, pursuant to the procedures set forth in paragraph (c):

(1)–(10) No change.

(11) shall, between 9:45 a.m. and 3:35 p.m., or in the case of an early scheduled close, 25 minutes before the close of trading, immediately pause trading for 5 minutes in any Nasdaq-listed security when the price of such security moves 10 percent or more within a 5-minute period. At the end of the trading pause, Nasdaq will re-open the security using the Halt Cross process set forth in Nasdaq Rule 4753. In the event of a significant imbalance at the end of a trading pause, Nasdaq may delay the re-opening of a security.

Nasdaq will issue a notification if it cannot resume trading for a reason other than a significant imbalance.

Price moves under this paragraph will be calculated by changes in each consolidated last-sale price disseminated by a network processor over a five minute rolling period measured continuously. Only regular way in-sequence transactions qualify for use in calculations of price moves. Nasdaq can exclude a transaction price from use if it concludes that the transaction price resulted from an erroneous trade.

If a trading pause is triggered under this paragraph, Nasdaq shall immediately notify the single plan processor responsible for consolidation of information for the security pursuant to Rule 603 of Regulation NMS under the Securities Exchange Act of 1934. If a primary listing market issues an individual stock trading pause, Nasdaq will pause trading in that security until trading has resumed on the primary listing market or notice has been received from the primary listing market that trading may resume. If the primary listing market does not reopen within 10 minutes of notification of a trading pause, Nasdaq may resume trading the security.

The provisions of this paragraph shall only apply to securities in the Standard & Poor's 500 Index, the Russell 1000 Index, as well as a pilot list of Exchange Traded Products.

The provisions of this paragraph shall be in effect during a pilot set to end on *the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies*[April 11, 2011].

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

1. Purpose

On June 10, 2010, the Commission granted accelerated approval, for a pilot period to end December 10, 2010, for a proposed rule change submitted by the Exchange, together with related rule changes of the BATS Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, New York Stock Exchange LLC ("NYSE"), NYSE Amex LLC ("NYSE Amex"), NYSE Arca, Inc. ("NYSE Arca"), and National Stock Exchange, Inc. (collectively, the "Exchanges"), to pause trading during periods of extraordinary market volatility in S&P 500 stocks.[3] The rules require the Listing Markets[4] to issue five-minute trading pauses for individual securities for which they are the primary Listing Market if the transaction price of the security moves ten percent or more from a price in the preceding five-minute period. The Listing Markets are required to notify the other Exchanges and market participants of the imposition of a trading pause by immediately disseminating a special indicator over the consolidated tape. Under the rules, once the Listing Market issues a trading pause, the other Exchanges are required to pause trading in the security on their markets. On September 10, 2010, the Commission approved the respective rule filings of the Exchanges to expand application of the pilot to the Russell 1000® Index and specified Exchange Traded Products.[5] On December 7, 2010, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on April 11, 2011.[6]

The Exchange believes that the pilot program has been successful in reducing the negative impacts of sudden, unanticipated price movements in the securities covered by the pilot. The Exchange also believes that an additional four month extension of the pilot is warranted so that it may continue to assess whether circuit breakers are the best means to reduce the negative impacts of sudden, unanticipated price movements or whether alternative mechanisms would be more effective in achieving this goal. In this regard, the Exchange notes that the Exchanges are developing a "limit up/limit down" mechanism to reduce the negative impacts of sudden, unanticipated price movements in securities traded on the Exchanges. As such, the proposed extension may be shorter in duration should the Exchange adopt a limit up/limit down mechanism to address extraordinary market volatility. Accordingly, the Exchange is filing to further extend the pilot program until the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act"),[7] which requires the rules of an

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–NASDAQ–2010–061).

[4] The term "Listing Markets" refers collectively to NYSE, NYSE Amex, NYSE Arca, and the Exchange.

[5] Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–NASDAQ–2010–079).

[6] Securities Exchange Act Release No. 63505 (December 9, 2010), 75 FR 78302 (December 15, 2010) (SR–NASDAQ–2010–162).

[7] 15 U.S.C. 78f(b)(5).

exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[8] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[11] However, Rule 19b–4(f)(6)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission has considered the Exchange's request to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program.[13] For this reason, the Commission designates the proposed rule change to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2011–042 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–042. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2011–042, and should be submitted on or before April 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8374 Filed 4–7–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78k–1(a)(1).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *Id.*

[13] For the purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64176; File No. SR–BX–2011–018]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of the Trading Pause for Individual Stocks Contained in the Standard & Poor's 500 Index, Russell 1000 Index, and Specified Exchange Traded Products That Experience a Price Change of 10% or More During a Five-Minute Period

April 4, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on March 31, 2011, NASDAQ OMX BX, Inc. ("Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period of the trading pause for individual stocks contained in the Standard & Poor's 500 Index, Russell 1000 Index, and specified Exchange Traded Products that experience a price change of 10% or more during a five-minute period, so that the pilot will now expire the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

IM–4120–3. Circuit Breaker Securities Pilot

The provisions of paragraph (a)(11) of this Rule shall be in effect during a pilot set to end on *the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies*[April 11, 2011]. During the pilot, the term "Circuit Breaker Securities" shall mean the securities included in the S&P 500® Index, the Russell 1000 Index, as well as a pilot list of Exchange Traded Products.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 10, 2010, the Commission granted accelerated approval, for a pilot period to end December 10, 2010, for a proposed rule change submitted by the Exchange, together with related rule changes of the BATS Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC ("NASDAQ"), New York Stock Exchange LLC ("NYSE"), NYSE Amex LLC ("NYSE Amex"), NYSE Arca, Inc. ("NYSE Arca"), and National Stock Exchange, Inc. (collectively, the "Exchanges"), to pause trading during periods of extraordinary market volatility in S&P 500 stocks.[3] The rules require the Listing Markets[4] to issue five-minute trading pauses for individual securities for which they are the primary Listing Market if the transaction price of the security moves ten percent or more from a price in the preceding five-minute period. The Listing Markets are required to notify the other Exchanges and market participants of the imposition of a trading pause by immediately disseminating a special indicator over the consolidated tape. Under the rules, once the Listing Market issues a trading pause, the other Exchanges are required to pause trading in the security on their markets. On September 10, 2010, the Commission approved the respective rule filings of the Exchanges to expand application of the pilot to the Russell 1000® Index and specified Exchange Traded Products.[5] On December 7, 2010, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on April 11, 2011.[6]

The Exchange believes that the pilot program has been successful in reducing the negative impacts of sudden, unanticipated price movements in the securities covered by the pilot. The Exchange also believes that an additional four month extension of the pilot is warranted so that it may continue to assess whether circuit breakers are the best means to reduce the negative impacts of sudden, unanticipated price movements or whether alternative mechanisms would be more effective in achieving this goal. In this regard, the Exchange notes that the Exchanges are developing a "limit up/limit down" mechanism to reduce the negative impacts of sudden, unanticipated price movements in securities traded on the Exchanges. As such, the proposed extension may be shorter in duration should the Exchange adopt a limit up/limit down mechanism to address extraordinary market volatility. Accordingly, the Exchange is filing to further extend the pilot program until the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act"),[7] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[8] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[3] Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–BX–2010–037).

[4] The term "Listing Markets" refers collectively to NYSE, NYSE Amex, NYSE Arca, and NASDAQ.

[5] Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–BX–2010–044).

[6] Securities Exchange Act Release No. 63527 (December 10, 2010), 75 FR 78781 (December 16, 2010) (SR–BX–2010–088).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78k–1(a)(1).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[11] However, Rule 19b–4(f)(6)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission has considered the Exchange's request to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program.[13] For this reason, the Commission designates the proposed rule change to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2011–018 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2011–018. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BX–2011–018, and should be submitted on or before April 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8376 Filed 4–7–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *Id.*

[13] For the purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64175; File No. SR–Phlx–2011–44]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of the Trading Pause for Individual Stocks Contained in the Standard & Poor's 500 Index, Russell 1000 Index, and Specified Exchange Traded Products That Experience a Price Change of 10% or More During a Five-Minute Period

April 4, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2011, NASDAQ OMX PHLX LLC ("Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period of the trading pause for individual stocks contained in the Standard & Poor's 500 Index, Russell 1000 Index, and specified Exchange Traded Products that experience a price change of 10% or more during a five-minute period, so that the pilot will now expire on the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Rule 3100. Trading Halts on PSX

(a) Authority to Initiate Trading Halts or Pauses

In circumstances in which the Exchange deems it necessary to protect investors and the public interest, and pursuant to the procedures set forth in paragraph (c):

(1)–(3) No change.

(4) If a primary listing market issues an individual stock trading pause in any of the Circuit Breaker Securities, as defined herein, the Exchange will pause trading in that security until trading has resumed on the primary listing market. If, however, trading has not resumed on the primary listing market and ten minutes have passed since the individual stock trading pause message has been received from the responsible single plan processor, the Exchange may resume trading in such stock. The provisions of this paragraph (a)(4) shall be in effect during a pilot set to end on *the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies* [April 11, 2011]. During the pilot, the term "Circuit Breaker Securities" shall mean the securities included in the S&P 500® Index and the Russell 1000® Index, as well as a pilot list of Exchange Traded Products.

(b)–(c) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 10, 2010, the Commission granted accelerated approval, for a pilot period to end December 10, 2010, of proposed rule changes submitted by the of the BATS Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC ("NASDAQ"), New York Stock Exchange LLC ("NYSE"), NYSE Amex LLC ("NYSE Amex"), NYSE Arca, Inc. ("NYSE Arca"), and National Stock Exchange, Inc. (collectively, the "Exchanges"), to pause trading during periods of extraordinary market volatility in S&P 500 stocks.[3] The rules require the Listing Markets[4] to issue five-minute trading pauses for individual securities for which they are the primary Listing Market if the transaction price of the security moves ten percent or more from a price in the preceding five-minute period. The Listing Markets are required to notify the other Exchanges and market participants of the imposition of a trading pause by immediately disseminating a special indicator over the consolidated tape. Under the rules, once the Listing Market issues a trading pause, the other Exchanges are required to pause trading in the security on their markets. On September 10, 2010, the Commission approved the respective rule filings of the Exchanges to expand application of the pilot to securities comprising the Russell 1000® Index and specified Exchange Traded Products.[5]

In connection with its resumption of trading of NMS Stocks through the NASDAQ OMX PSX system, the Exchange adopted Rule 3100(a)(4) so that it could participate in the pilot program.[6] On September 29, 2010, the Exchange amended Rule 3100(a)(4) to include stocks comprising the Russell 1000® Index and specified Exchange Traded Products.[7] On December 7, 2010, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on April 11, 2011.[8]

The Exchange believes that the pilot program has been successful in reducing the negative impacts of sudden, unanticipated price movements in the securities covered by the pilot. The Exchange also believes that an additional four month extension of the pilot is warranted so that it may continue to assess whether circuit breakers are the best means to reduce the negative impacts of sudden, unanticipated price movements or whether alternative mechanisms would be more effective in achieving this goal. In this regard, the Exchange notes that the Exchanges are developing a "limit up/limit down" mechanism to reduce the negative impacts of sudden, unanticipated price movements in securities traded on the Exchanges. As such, the proposed extension may be shorter in duration should the Exchange adopt a limit up/limit down mechanism to address extraordinary market volatility. Accordingly, the Exchange is filing to further extend the pilot program until the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act"),[9] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[10] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

[3] Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010).

[4] The term "Listing Markets" refers collectively to NYSE, NYSE Amex, NYSE Arca, and NASDAQ.

[5] Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010).

[6] Securities Exchange Act Release No. 62877 (September 9, 2010), 75 FR 56633 (September 16, 2010) (SR–Phlx–2010–79).

[7] Securities Exchange Act Release No. 63004 (September 29, 2010), 75 FR 61547 (October 5, 2010) (SR–Phlx–2010–126).

[8] Securities Exchange Act Release No. 63504 (December 9, 2010), 75 FR 78304 (December 15, 2010) (SR–Phlx–2010–174).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1(a)(1).

as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[13] However, Rule 19b–4(f)(6) [14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission has considered the Exchange's request to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program.[15] For this reason, the Commission designates the proposed rule change to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2011–44, and should be submitted on or before April 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8375 Filed 4–7–11; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *Id.*

[15] For the purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 7410]

Bureau of Western Hemisphere Affairs; Executive Order 11423, as Amended; Notice of Receipt of Application for a Presidential Permit To Reconfigure and Expand the Calexico West Land Port of Entry (LPOE) on the U.S.-Mexico Border at Calexico, CA and Mexicali, Baja California, Mexico

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State hereby gives notice that, on March 11, 2011, it received an application for a Presidential Permit to authorize the reconfiguration and expansion of the Calexico West Land Port of Entry (LPOE) on the U.S.-Mexico border at Calexico, California and Mexicali, Baja California, Mexico. The General Services Administration (GSA) filed this application and is acting as the project's sponsor. The Department of State's jurisdiction over this application is based upon Executive Order 11423 of August 16, 1968, as amended. As provided in E.O. 11423, the Department is circulating this application to relevant Federal and State agencies for review and comment. Under E.O. 11423, the Department has the responsibility to determine, taking into account input from these agencies and other stakeholders, whether the proposed expansion of this border crossing is in the U.S. national interest. GSA has informed the Department that it plans to release its final Environmental Impact Statement (EIS) regarding this project to the public on June 3, 2011. GSA released a draft EIS in June, 2010, which is available at *http://www.gsa.gov/graphics/pbs/Calexico_PDES_June_2010b508.pdf.* The Department of State received a copy of that draft EIS and provided comments to GSA. GSA has also informed the Department that it anticipates that the GSA Administrator will be in a position to reach an official Record of Decision on this project by July 2011.

DATES: Interested members of the public are invited to submit written comments regarding this application on or before 14 days after the GSA Regional Administrator reaches his/her Record of Decision to Mr. Stewart Tuttle, U.S.-Mexico Border Affairs Coordinator, via e-mail at *WHA-BorderAffairs@state.gov* or by mail at WHA/MEX—Room 3908, Department of State, 2201 C St. NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Mr. Stewart Tuttle, U.S.-Mexico Border

Affairs Coordinator, via e-mail at *WHA-BorderAffairs@state.gov;* by phone at 202–647–6356; or by mail at WHA/MEX—Room 3908, Department of State, 2201 C St. NW., Washington, DC 20520. General information about Presidential Permits is available on the Internet at *http://www.state.gov/p/wha/rt/permit/.*

SUPPLEMENTARY INFORMATION: This application and related environmental assessment documents are available for review in the Office of Mexican Affairs, Border Affairs Unit, Department of State, during normal business hours.

Dated: April 4, 2011.

Edward Alexander Lee,

Director, Office of Mexican Affairs, Department of State.

[FR Doc. 2011–8433 Filed 4–7–11; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice: 7330]

Industry Advisory Panel; Notice of Open Meeting

The Industry Advisory Panel of the Bureau of Overseas Buildings Operations will meet on Tuesday, April 26, 2011 from 9:30 a.m. until 3:30 p.m. Eastern Daylight Time. The meeting is open to the public and will be held in the Loy Henderson Conference Room of the U.S. Department of State, located at 2201 C Street, NW., (entrance on 23rd Street) Washington, DC. For logistical and security reasons, it is imperative that everyone enter and exit using only the 23rd Street entrance.

The majority of the meeting will be devoted to an exchange of ideas between the Department's senior management and the panel members on design, operations, and building maintenance, with a focus on the new Design Excellence initiative. There will be reasonable time provided for members of the public to provide comment.

Entry to the building is controlled; to obtain pre-clearance, a member of the public planning to attend should provide, by April 12, his or her name, professional affiliation, date of birth, citizenship, and a valid government-issued ID number (*i.e.,* U.S. government ID, U.S. military ID, passport, or drivers license) via e-mail to: *IAPR@state.gov.* Requests for reasonable accommodation should be sent to the same e-mail address by April 12. Requests made after that date will be considered, but may not be able to be fulfilled.

Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information.

Please contact Christy Foushee at *FousheeCT@state.gov* or (703) 875–4131 with any questions.

Dated: March 28, 2011.

Adam E. Namm,

Director, Acting, U.S. Department of State, Bureau of Overseas Buildings Operations.

[FR Doc. 2011–8432 Filed 4–7–11; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice: 7331]

U.S. Department of State Advisory Committee on Private International Law (ACPIL): Notice of Public Meeting of Its Online Dispute Resolution (ODR) Study Group

The Office of the Assistant Legal Adviser for Private International Law, Department of State hereby gives notice of a public meeting of the ACPIL ODR Study Group. The meeting will take place on Friday, April 29, 2011 from 10 a.m. to 1 p.m. EDT at the Department of State, Washington, DC. This is not a meeting of the full Advisory Committee.

The ODR Study Group will meet to discuss the upcoming meeting of the UNCITRAL ODR Working Group that will take place May 23–27 in New York. The UNCITRAL ODR Working Group is charged with the development of legal instruments for resolving both business to business and business to consumer cross-border electronic commerce disputes. At the May meeting, the UNCITRAL Working Group will consider inter alia ODR procedural rules for resolution of cross-border electronic commerce disputes. For the report of the first session of the UNCITRAL ODR Working Group December 13–17, 2010 in Vienna (A/CN.9/716) please follow the following link: *http://daccess-dds-ny.un.org/doc/UNDOC/GEN/V11/801/48/PDF/V1180148.pdf?OpenElement.* For the draft text of online procedural rules that will be considered at the upcoming ODR Working Group session please see the following link: *http://daccess-dds-ny.un.org/doc/UNDOC/LTD/V11/813/11/PDF/V1181311.pdf?OpenElement.*

Time and Place: The meeting will take place on Friday April 29, 2011 from 10 a.m. to 1 p.m. EDT at the Office of the Assistant Legal Adviser for Private International Law, Department of State, Washington, DC. Participants should appear by 9:45 a.m. at the C Street gate to Navy Hill, corner of C Street, NW., and 23rd Street, NW.

Public Participation: This Study Group meeting is open to the public, subject to the capacity of the meeting room. Access to the meeting building is controlled; persons wishing to attend should contact Tricia Smeltzer or Niesha Toms of the Department of State Legal Adviser's Office at *SmeltzerTK@state.gov* or *TomsNN@state.gov* and provide your name, affiliation, e-mail address, and mailing address. Data from the public is requested pursuant to Public Law 99–399 (Omnibus Act of 1986) as amended; Public Law 107–56 (USA PATROIT ACT): and Executive Order 13356. The primary purpose for collecting is to validate the identity of individuals who enter Department facilities. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information. Persons who cannot attend but who wish to comment are welcome to do so by e-mail to Michael Dennis at *DennisMJ@state.gov.* A member of the public needing reasonable accommodation should advise those same contacts not later than April 15th. Requests made after that date will be considered, but might not be able to be fulfilled. If you are unable to attend the public meeting and you would like to participate by teleconferencing, please contact Tricia Smeltzer or Niesha Toms at 202–776–8420 to receive the conference call-in number and the relevant information.

Dated: March 31, 2011.

Michael J. Dennis,

Attorney-Adviser, Office of Private International Law, Office of the Legal Adviser, Department of State.

[FR Doc. 2011–8454 Filed 4–7–11; 8:45 am]

BILLING CODE 4710–08–P

TENNESSEE VALLEY AUTHORITY

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Tennessee Valley Authority.

ACTION: 30-Day notice of submission of information collection approval from

the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the Tennessee Valley Authority (TVA) has submitted a Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery " to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be submitted May 9, 2011.

ADDRESSES: Written comments may be submitted to the Agency Clearance Officer: Mark Winter, Tennessee Valley Authority, 1101 Market Street (MP–3C), Chattanooga, Tennessee 37402–2801; (423) 751–6004.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact the Agency Clearance Officer: Mark Winter, Tennessee Valley Authority, 1101 Market Street (MP–3C), Chattanooga, Tennessee 37402–2801; (423) 751–6004.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Agency received no comments in response to the 60-day notice published in the **Federal Register** of December 22, 2010 (75 FR 80542).

Below we provide TVA's projected average estimates for the next three years: [1]

Current Actions: New collection of information.

Type of Review: New Collection

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of Activities: 5.

Respondents: 10,000.

Annual Responses: 10,000.

Frequency of Response: Once per request.

Average Minutes per Response: 15.

Burden Hours: 2,500.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

James W. Sample,

Director, Enterprise Information Security and Policy.

[FR Doc. 2011–8384 Filed 4–7–11; 8:45 am]

BILLING CODE 8120–08–P

[1] The 60-day notice included the following estimate of the aggregate burden hours for this generic clearance Federal-wide:

Average Expected Annual Number of Activities: 25,000.

Average Number of Respondents per Activity: 200.

Annual Responses: 5,000,000.

Frequency of Response: Once per request.

Average Minutes per Response: 30.

Burden Hours: 2,500,000.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Disclosure of Rail-Interchange Commitments; Notice and Request for Comments

AGENCY: Surface Transportation Board, DOT.

ACTION: 30-day notice of request for approval: Disclosure of Rail-Interchange Commitments.

SUMMARY: As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3519 (PRA), the Surface Transportation Board (STB or Board) has submitted a request to the Office of Management and Budget (OMB) for an reinstatement of approval for the collection of agreements containing rail-interchange commitments. A rail interchange commitment is a contractual provision, which may be included with a sale or lease of a rail line, that limits the incentive or the ability of the purchaser or tenant carrier to interchange traffic with rail carriers other than the seller or lessor railroad. Under the Board's regulations, whenever a carrier or other person seeks authority, through the Board's abbreviated exemption procedures, to acquire (through sale or lease) or to operate a rail line, that carrier or other person is required to submit a copy of any agreement that contains such an interchange commitment.

The Board previously published a notice about this collection in the **Federal Register** on December 22, 2010, at 75 FR 80,569. That notice allowed for a 60-day public review and comment period. No comments were received. This collection is described in detail below. Comments may now be submitted to OMB concerning: (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate; and (4) whether this collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility.

Description of Collection

Title: Disclosure of Rail Interchange Commitments.

OMB Control Number: 2140–0016.

STB Form Number: None.

Type of Review: Reinstatement with change. (The current request reduces the estimated respondents from 65 to 6 respondents based on the Board's actual experience with this collection. As a result, the total annual burden hours is reduced to 1½; hours, rather than the 16 hours, as the Board had estimated when the collection was proposed.)

Respondents: Noncarriers and carriers seeking an exemption to acquire (through purchase or lease) and/or operate a rail line, if the proposed transaction includes an interchange commitment.

Number of Respondents: 6.

Estimated Time per Response: Less than 15 minutes.

Frequency: On occasion.

Total Burden Hours (annually including all respondents): 1½; hours.

Total "Non-hour Burden" Cost: None identified.

Needs and Uses: Under 49 U.S.C. 10502, noncarriers and carriers may seek an exemption from the prior approval requirements of sections 10901, 10902, and 11323 to acquire (through purchase or lease) and operate a rail line. This collection of agreements with interchange commitments facilitates the case-specific review of interchange commitments and facilitates the Board's monitoring of their usage generally.

Retention Period: Information in this report will be maintained in the Board's confidential file for 10 years, after which it is transferred to the National Archives.

DATES: Comments on this information collection should be submitted to OMB by May 9, 2011. When submitting comments, please refer to "Disclosure of Rail Interchange Commitments, OMB Control Number 2140–0016."

ADDRESSES: Comments should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Kimberly Nelson, Surface Transportation Board Desk Officer, by fax at (202) 395–6974; by mail at Room 10235, 725 17th Street, NW., Washington, DC 20503; or by e-mail at *OIRA_SUBMISSION@OMB.EOP.GOV.*

For Further Information or to Obtain a Copy of the STB Form, Contact: Joe Dettmar at (202) 245–0395 or at *dettmarj@stb.dot.gov.* [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under § 3506(b) of the PRA, Federal agencies are required to provide, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period, through publication in the **Federal Register**, concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: April 5, 2011.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–8402 Filed 4–7–11; 8:45 am]

BILLING CODE 4915–01–P

FEDERAL REGISTER

Vol. 76 Friday,
No. 68 April 8, 2011

Part II

Environmental Protection Agency

40 CFR Parts 85 and 86
Clean Alternative Fuel Vehicle and Engine Conversions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85 and 86

[EPA–HQ–OAR–2009–0299; FRL–9289–7]

RIN 2060–AP64

Clean Alternative Fuel Vehicle and Engine Conversions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is streamlining the process by which manufacturers of clean alternative fuel conversion systems may demonstrate compliance with vehicle and engine emissions requirements. Specifically, EPA is revising the regulatory criteria for gaining an exemption from the Clean Air Act prohibition against tampering for the conversion of vehicles and engines to operate on a clean alternative fuel. This final rule creates additional compliance options beyond certification that protect manufacturers of clean alternative fuel conversion systems against a tampering violation, depending on the age of the vehicle or engine to be converted. The new options alleviate some economic and procedural impediments to clean alternative fuel conversions while maintaining environmental safeguards to ensure that acceptable emission levels from converted vehicles are sustained.

DATES: The rule is effective April 8, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2009–0299. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the following location: EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Amy Bunker, Compliance and Innovative Strategies Division, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, Michigan 48105. Telephone: (734) 214–4160. E-mail Address: *bunker.amy@epa.gov*.

SUPPLEMENTARY INFORMATION:

Affected Entities

This action will affect companies and persons that manufacture, assemble, sell, import, or install alternative fuel conversions for light-duty vehicles, light-duty trucks, medium-duty passenger vehicles, and heavy-duty vehicles and engines. Such entities are categorized as follows:

NAICS codes [1]	Examples of potentially regulated entities
335312	Motor and Generator Manufacturing.
336312	Gasoline Engine and Engine Parts Manufacturing.
336322	Other Motor Vehicle Electrical and Electronic Equipment Manufacturing.
336399	All Other Motor Vehicle Parts Manufacturing.
811198	All Other Automotive Repair and Maintenance.

This list is not intended to be exhaustive, but rather to provide a guide regarding entities likely to be affected by this action. To determine whether particular activities may be affected by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action to the contact as noted above in **FOR FURTHER INFORMATION CONTACT**.

Table of Contents

[1] North American Industry Classification System (NAICS).

I. Introduction

With the vast majority of motor vehicles in the United States designed to operate on gasoline or diesel fuel, there has been a longstanding and growing interest by the public in clean alternative fuel conversion systems. These systems allow gasoline or diesel vehicles to operate on alternative fuels such as natural gas, propane, alcohol, or electricity. Use of alternative fuels opens new fuel supply choices and can help consumers address concerns about fuel costs, energy security, and emissions. The U.S. Environmental Protection Agency (EPA) is responsible for ensuring that all vehicles and engines sold in the United States, including aftermarket conversions, meet emission standards. EPA is streamlining the process by which manufacturers of clean alternative fuel conversion systems may demonstrate compliance with these vehicle and engine emissions requirements. The new options reduce some economic and procedural impediments to clean alternative fuel conversions while maintaining environmental safeguards to ensure that acceptable emission levels from converted vehicles and engines [2] are sustained.

The conversion of vehicles or engines to operate on fuels other than those for which they were originally designed may yield certain benefits, but it also presents several legal and environmental concerns. The concerns stem from Clean Air Act (CAA, the Act) provisions intended to ensure that vehicles and engines remain clean throughout their useful life. To this end, the Act requires EPA to establish motor vehicle emission standards that apply throughout useful life, and to verify through issuance of a certificate of conformity that any vehicle or engine entered into commerce complies with the established emission standards.[3] Once certified, the vehicle or engine generally may not be altered from its certified configuration.[4] The CAA prohibition against alteration or "tampering" is important because emission standards apply well beyond a vehicle's or engine's initial entry into commerce. It is extremely difficult to reconfigure integrated and sophisticated modern automotive systems, precisely designed to achieve low pollution levels over time, without negatively affecting their durability or emissions performance.

EPA has long recognized vehicle and engine alteration for the purpose of clean alternative fuel conversion as a special case because while improperly designed or installed conversions can increase emissions, properly engineered conversions can reduce, or at least not increase, emissions. Furthermore, use of alternative fuels can help achieve other goals such as diversifying the fuel supply through use of domestic energy sources. Therefore, EPA has established policies through which conversion manufacturers can demonstrate that the conversion does not compromise emissions compliance. The previous compliance requirements provided adequate environmental oversight but were not optimal for the conversions industry, and especially not for conversion of older vehicles and engines. To address these concerns, EPA is updating the regulations with practical, streamlined testing and administrative requirements that ensure long-term compliance without imposing unnecessary burden on converters. This action is also consistent with the President's January 18, 2011 Executive Order (EO) 13563, "Improving Regulation and Regulatory Review." Specifically, this EO directs, under Section 4, Flexible Approaches, that "where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public."

On May 26, 2010, (75 FR 29606) EPA proposed rule changes to simplify and streamline the process [5] by which manufacturers of clean alternative fuel conversion systems may demonstrate compliance with emissions requirements. EPA held a public hearing on the proposal on June 23, 2010 and

[2] EPA's emission standards generally are associated with either vehicle (chassis) or engine test procedures, depending on the vehicle's gross vehicle weight rating and other factors. In this rulemaking, we may use the terms "vehicle/engine," "vehicle and engine," or "vehicle or engine," when referring to concepts that are applicable to either the vehicle or engine depending on the applicable standard.

[3] *See* CAA sections 202, 203, and 206.

[4] CAA section 203.

[5] These regulations were originally promulgated on September 21, 1994 (59 FR 48472) and located in 40 CFR part 85, subpart F.

accepted public comment through July 23, 2010. Comments generally supported the proposed rule changes. These comments are available for public viewing in Docket EPA–HQ–OAR–2009–02999. Docket content can be viewed and/or downloaded at *http://www.regulations.gov*. Our responses to these comments are detailed in the Response to Comments document, which is available in the public docket and on our Web site.[6] In this final rule we present background information and provide a description of the content, timing, and rationale for the final program. For background and details regarding the proposal, readers should consult the Notice of Proposed Rulemaking and related documents. EPA is finalizing the rule revisions largely as proposed. The revised program expands compliance options for conversion manufacturers and establishes less burdensome demonstration requirements that will nonetheless sustain EPA's oversight and longstanding commitment to the environmental integrity of clean alternative fuel conversions.

This new approach streamlines the regulatory process and introduces new flexibilities for conversion manufacturers, while ensuring that converted vehicles and engines retain acceptable levels of emission control. The revised program also addresses the uncertainty some converters may previously have experienced in determining whether a conversion constitutes tampering that could result in liability. EPA is revising the regulatory procedures in 40 CFR part 85, subpart F and part 86 to remain consistent with the CAA yet reflect the concept that it is appropriate to treat conversion requirements[7] differently based on vehicle or engine age. The new program facilitates age-appropriate testing and compliance procedures by placing alternative fuel conversions into one of three categories: (1) Conversions of vehicles or engines that are "new and relatively-new" (hereafter referred to as "new" solely for the purpose of this preamble),[8] (2) conversions of vehicles or engines that are no longer new (*i.e.,* no longer "new and relatively-new") but that still fall within EPA's definition of full useful life ("intermediate age" vehicles and engines), and (3) conversions of vehicles or engines that are outside EPA's definition of useful life ("outside useful life" vehicles and engines).

For the first category, conversions of new vehicles and engines, EPA believes that a requirement for a certificate of conformity remains appropriate because those vehicles and engines were entered into commerce as the subject of a recently issued Original Equipment Manufacturer (OEM) certificate of conformity. Such vehicles/engines typically have the majority of their useful life remaining. In addition, the condition of a relatively new vehicle or engine is still likely to be representative of the OEM vehicle or engine used in certification testing. A certification requirement for new vehicle and engine conversion also eliminates any perceived incentive that might otherwise exist for OEMs to convert a certified traditional configuration rather than to certify an alternative fuel configuration in the first place. Thus, EPA is finalizing procedures that largely retain the current certification protocols for manufacturers of conversion systems for new vehicles and engines, while providing some new flexibility in grouping such vehicles or engines for certification purposes. For the second category, intermediate age vehicles and engines, EPA is finalizing demonstration protocols whereby fuel conversion manufacturers demonstrate through testing that the converted vehicle or engine still meets applicable CAA section 202 emission standards. For the third category, vehicles and engines outside their full useful life, there is no longer an applicable standard to serve as a benchmark, because the CAA section 202 emission standards apply only within the useful life. Therefore, EPA sought comment on three options through which manufacturers of conversion systems for older vehicles and engines could demonstrate that the conversion is technically viable and will not increase emissions. EPA also offered an alternate approach for comment that would have created two subcategories of outside useful life vehicles/engines. EPA is finalizing the demonstration protocol described in the proposal as Option 3 and is adopting a single outside useful life category based on the current regulatory definition. Manufacturers of conversion systems designed for outside useful life vehicles and engines must submit detailed technical information describing the conversion system and a scan tool report showing that both vehicle/engine emission controls and the On-Board Diagnostic (OBD) system continue to work properly.

The purpose of the revised program is to expand compliance options for conversion manufacturers while sustaining EPA's oversight and longstanding commitment to the environmental integrity of clean alternative fuel conversions. Consistent with this intent and with the CAA, EPA requires any conversion to be technically sound, regardless of the vehicle or engine age category, and will continue to hold the conversion manufacturer accountable for acceptable emissions performance once the converted vehicle or engine is in customer service. EPA will employ compliance tools as appropriate, such as confirmatory testing and in-use vehicle/engine emissions monitoring to check fleet performance, as it does with OEM vehicles/engines.

II. Authority

A. Vehicle and Engine Standards and Certification

The CAA grants EPA authority to establish, administer, and enforce emission standards for motor vehicles and engines. The CAA states that a new vehicle or engine may not be introduced into commerce unless it has been issued a certificate of conformity ("certificate") by EPA.[9] A certificate is issued when a manufacturer has demonstrated to EPA through a regulatory testing and data submission process that the vehicle or engine will conform for its useful life to the standards promulgated by EPA.[10] Each certificate is valid for up to one model year.[11]

B. Useful Life

The CAA directs EPA to promulgate emission standards that are applicable for a vehicle or engine's "useful life" and to establish the useful life period through regulation.[12] The full useful life

[6] *See* Response to Comments document at *http://www.regulations.gov* under docket id EPA–HQ–OAR–2009–0299 or at *http://www.epa.gov/otaq/consumer/fuels/altfuels/altfuels.htm.*

[7] The term "requirements" is often used in the preamble and regulatory text for this rulemaking to refer to the notification, demonstration, and other regulatory provisions that a conversion manufacturer must satisfy to qualify under this rule for an exemption from the CAA tampering prohibition. These requirements only apply to conversion manufacturers seeking an exemption under this rule. Any person who does not obtain an exemption and whose conduct constitutes tampering is liable under the CAA.

[8] *See* Section IV.A and Sections 85.505 and 85.510. Sections 85.505(b)(1) and 85.510 apply to "new and relatively-new" vehicles or engines, *i.e.,* where the date of conversion is in a calendar year that is not more than one year after the original model year of the vehicle/engine. In this preamble, we refer to these "new and relatively-new" vehicles/engines as "new" only as a shorthand reference to the category of "new and relatively-new" engines/vehicles. This shorthand use of "new" is not intended to mean that these vehicles/engines are "new" under the Act or any EPA regulations.

[9] CAA section 203(a)(1).

[10] CAA sections 202 and 206.

[11] 40 CFR 86.1848–01.

[12] CAA section 202.

varies among pollutant standards and among vehicle or engine categories.[13] For example, recent model year light-duty vehicles (cars and small trucks) generally have a useful life of 10 years or 120,000 miles, whichever comes first;[14] recent model year heavy-duty chassis certified[15] vehicles and medium-duty passenger vehicles generally have a useful life of 11 years or 120,000 miles, whichever comes first;[16] and current Otto-cycle heavy-duty engines have a useful life of 110,000 miles or 10 years, whichever first occurs.[17] For current diesel heavy-duty engines (also referred to as "compression-ignition" or "diesel cycle"), there are different useful life definitions based on gross vehicle weight, pollutant being controlled, and test procedure, ranging from 10 years or 110,000 miles, whichever first occurs, to 10 years or 435,000 miles or 22,000 hours of engine operation, whichever first occurs.[18]

C. "Tampering" Prohibition

Under CAA section 203(a)(3), it is prohibited:

(A) For any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or

(B) For any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.

The CAA prohibition against tampering applies to vehicles and engines regardless of age or mileage accumulation.[19]

D. Exemption for Conversions

The CAA provides for several statutory exemptions to the prohibition on tampering. One of these exemptions is for actions which are "for the purpose of a conversion of a motor vehicle for use of a clean alternative fuel (as defined in this subchapter) and if such vehicle complies with the applicable standard under section 202 when operating on such fuel."[20]

E. Authority for Clean Alternative Fuel Conversions Program

The regulatory issue posed by vehicle and engine clean alternative fuel conversions is how to design a program that allows manufacturers to demonstrate that their conversion system warrants an exemption from the prohibition against tampering. The 1994 rulemaking that created the 40 CFR part 85, subpart F regulations ("the subpart F regulations") stated, "It has always been the Agency's policy that an aftermarket conversion not degrade the emissions performance of the original vehicle as a condition of being exempt from prosecution for tampering violations."[21]

Today's final rule is based on EPA's interpretation that section 203(a) provides a tampering exemption for clean alternative fuel conversions. The section 203(a) exemption from tampering applies when the otherwise prohibited act is for "the purpose of a conversion of a motor vehicle for use of a clean alternative fuel (as defined in this subchapter) and if such vehicle complies with the applicable standard under section 202 when operating on such fuel." Thus, the threshold qualification for the exemption is the proper purpose (*i.e.,* "conversion * * * for use of a clean alternative fuel"). The second criterion for the exemption is compliance with the applicable standard.

EPA is finalizing a program that requires a demonstration to satisfy both of these criteria for vehicles/engines that are still within their useful life. For vehicles/engines that are outside their useful life, even though a standard under CAA Section 202 is no longer applicable, EPA believes it is important to provide a legal path under which outside useful life vehicles/engines can be converted to use alternative fuels. Only clean alternative fuel conversion systems that comply with the regulations will qualify for the CAA section 203(a) exemption from the tampering prohibition for application to outside useful life vehicles and engines. Thus, EPA is finalizing a program that requires the conversion manufacturer to demonstrate that the threshold criterion is met (*i.e.,* "conversion * * * for use of a clean alternative fuel"). To meet the threshold criterion, the conversion manufacturer is required to demonstrate that emissions have not degraded as a result of the clean alternative fuel conversion. Such a demonstration serves to maintain air quality, consistent with the congressional intent in creating the exemption.

III. Program Design Elements Applicable to All Clean Alternative Fuel Conversions

The revised clean alternative fuel conversion program is designed to increase flexibility for conversion manufacturers while ensuring that converted vehicles/engines retain acceptable emission levels. Certain aspects of the program design depend on the age of the vehicle or engine being converted, while other program elements are common to all conversions. This section describes those program elements which are applicable to all clean alternative fuel conversions, regardless of vehicle or engine age.

In general there are three types of typical alternative fuel conversions: (1) Those that result in dedicated alternative fuel vehicles or engines, (2) those that result in dual-fuel vehicles or engines, and (3) those that result in mixed-fuel[22] (also known as bi-fuel and flexible-fuel) vehicles or engines.[23] The first type, dedicated alternative fuel vehicles or engines, are only capable of operating on one type of fuel. Dual-fuel vehicles or engines, the second type, can operate on two or more types of fuel, either the fuel(s) they were originally designed for or the new alternative fuel(s). Dual-fuel vehicles and engines can run on more than a single type of fuel but not on a mixture of the fuels. The third type, mixed-fuel vehicles or engines, are able to operate

[13] Regulations may also include optional standards such as in 40 CFR 86.1805–04(b) and (e).

[14] 40 CFR 86.1805–04.

[15] In this preamble we call heavy-duty vehicles that are currently regulated under 40 CFR subpart S "heavy-duty chassis certified vehicles". In the proposal we called this group of vehicles "heavy-duty complete vehicles".

[16] 40 CFR 86.1805–04. An optional useful life of 15 years or 150,000 miles, whichever comes first, may apply. 40 CFR 86.1860–04 (g).

[17] 40 CFR 86.004–2.

[18] 40 CFR 86.004–2.

[19] Any alteration of a motor vehicle or engine, its fueling system, or the integration of these systems, which may be classified as "tampering" under section 203(a) and which does not satisfy an available exemption would be a violation of the CAA for which section 205 authorizes EPA to assess penalties. *See* 40 CFR part 19.

[20] CAA section 203(a).

[21] 59 FR 48477 (Sep. 21, 1994).

[22] The term "flex-fuel" was used in the proposal. Because there are multiple uses and definitions of flexible-fuel in 40 CFR part 86, in this rule we call this category of fuel conversion "mixed-fuel." This definition only applies to clean alternative fuel vehicle and engine conversions.

[23] Note that other Federal agencies may define terms such as dual-fuel and bi-fuel differently than EPA definitions.

on either the original fuel(s) or the alternative fuel(s), or on a mix of the fuels. Mixed-fuel vehicles/engines are capable of combusting the different fuel types together in the engine. For example, an ethanol flexible-fuel vehicle is a mixed-fuel vehicle that can operate on 100% gasoline, or on any combination of gasoline and ethanol up to a mixture of 85% ethanol and 15% gasoline (known as "E85"). Conversions that enable an OEM diesel configuration to operate on either diesel fuel or a diesel-gaseous fuel mixture represent another example of a mixed-fuel vehicle/engine conversion system.

EPA regulates all types of alternative fuel conversions pursuant to the regulations specified in 40 CFR part 85, subpart F and certification provisions in 40 CFR part 86 and part 1065. EPA will continue to regulate typical types of conversions, along with newer or innovative types of fuel conversions that do not fit neatly into one of the general categories listed above. These include conversions of conventional gasoline or diesel vehicles to hybrid-electric vehicles, and conversions from hybrid-electric vehicles to plug-in hybrid electric vehicles. Since alternative fuel conversion activity often acts as a laboratory for new fuels and new technology, it is not possible to present an exhaustive list of covered categories or special cases. Each special case may require unique test procedures that are appropriate to new and developing technologies.[24]

A. Clean Alternative Fuel Conversions

Clean alternative fuel conversions for which the conversion manufacturer has complied with the revised subpart F regulations qualify for the CAA section 203(a) exemption from the tampering prohibition. EPA received comments suggesting that the definition of clean alternative fuel conversion should be limited to a group of fuels with proven emission benefits. EPA believes however that the public interest is better served by a broader definition that allows for future introduction of innovative and as-yet unknown fuel conversion systems. EPA is therefore finalizing the proposed definition of clean alternative fuel conversion (also referred to as "fuel conversion" or "conversion system") to be any alteration of a motor vehicle or engine, its fueling system, or the integration of these systems, that allows the vehicle or engine to operate on a fuel or power source different from the fuel or power source for which the vehicle or engine was originally certified; and that is designed, constructed, and applied consistent with good engineering judgment and in accordance with all applicable regulations. A clean alternative fuel conversion also includes the components, design, and instructions to perform this alteration. A clean alternative fuel conversion manufacturer (also referred to as "conversion manufacturer" or "converter") is a company or individual that manufactures, assembles, sells, imports, or installs a motor vehicle or engine fuel conversion for the purpose of use of a clean alternative fuel. EPA received comments expressing concern that a definition of conversion manufacturer that includes multiple parties potentially involved in a conversion process is too broad. EPA is finalizing the conversion manufacturer definition as proposed. The broad definition is intentional because any of the listed entities could potentially conduct the required compliance demonstration and thereby achieve eligibility for the tampering exemption. However, for any given test group or engine family, EPA expects that only one entity will function as the "clean alternative fuel conversion manufacturer." Should none of the listed entities satisfy the subpart F regulations for a covered fuel conversion, then all could potentially be liable for a tampering violation.

To demonstrate clean alternative fuel conversion compliance and gain exemption from the CAA tampering prohibition, conversion manufacturers are required to submit data and/or other information to EPA. For purposes of this preamble we will refer to the appropriate submission as a "demonstration" and to the process of submitting the demonstration as "notification." The specifics of the demonstration depend on the age of vehicles or engines being converted, but the general demonstration and notification requirements apply to all conversion systems. Section IV contains a detailed description of the age-specific demonstration and notification requirements. EPA will maintain lists of conversion systems that have satisfied the age-appropriate demonstration requirements through the EPA notification process and will make this information publicly available.

Any previous requirement that is not specifically addressed in this final rule will remain in place.

B. Good Engineering Judgment

A clean alternative fuel conversion manufacturer is eligible for the exemption from the CAA tampering prohibition only if the conversion system is designed, constructed, and applied using good engineering judgment. EPA understands that in the context of exempting clean alternative fuel conversions from the CAA tampering prohibition, certain aspects of good engineering judgment may vary as a function of clean alternative fuel type, OEM technology, and other factors. In general, good engineering judgment means that the conversion manufacturer has provided sufficient technical documentation for EPA to ascertain that the converted vehicle or engine will continue to satisfy emissions requirements, such as meeting standards within useful life or maintaining emissions performance after conversion outside useful life. Such documentation must be submitted to EPA in writing before any conversion kit is distributed or installed. EPA will evaluate several factors in assessing whether a conversion system represents good engineering judgment. These factors may include the following: Whether the system employs technology that is at least equivalent and equally effective in design, materials and overall sophistication to that of the OEM system, uses components that are sized to match the engine power requirements, uses instantaneous feedback control, and maintains proper OBD system function.

Documentation provided to support a claim of good engineering judgment may include emissions test data or other engineering analysis to demonstrate that the conversion technology will sustain acceptable emissions performance in the intended vehicles or engines.[25] Good engineering judgment also dictates that any testing or data used to satisfy demonstration requirements must be generated at a quality laboratory that

[24] *See* 40 CFR 86.1840–01.

[25] For example, EPA received a comment suggesting that vehicle fuel converters might take advantage of the OBD system diagnostic capabilities by interrogating the system before and after conversion using an OBD scan tool. Monitors supported by the OBD system may include misfire, oxygen sensors, catalyst monitor, exhaust gas recirculation (EGR), and evaporative emission controls. The converter could examine exhaust emission controls by collecting and interrogating Mode $6 data. Fueling system control could be examined through interrogation of Mode $1 data using the same scan tool. By comparing the numerical values read from a scan tool against the OBD failure thresholds, the vehicle fuel converter would be able to understand the robustness of the OBD system when operating on the alternative fuel and make any necessary calibration changes to the vehicle. This type of OBD information would provide greater assurance that the conversion does not render the OBD system susceptible to producing false negative or false positive results. This type of procedure is not a substitute for any other OBD demonstration requirements, but would add value in demonstrating good engineering judgment. For further examples of good engineering judgment, *see* Section IV.C.3.

exercises good laboratory practices and is capable of performing emission tests that comply with EPA regulations.

C. Vehicle/Engine Groupings and Emission Data Vehicle/Engine Selection

The unit of vehicle certification and compliance under the CAA and under EPA's implementing regulations is a group of vehicles that share similar technologies, design features, and emission control characteristics. Thus each OEM certificate of conformity can and usually does cover several vehicle models that have in common a unique combination of exhaust emission controls, evaporative emission controls, and OBD system features. The common exhaust emission system characteristics are represented by a grouping called a "test group." The common evaporative emission system characteristics are represented by an "evaporative/refueling family." The OBD system features are represented by an "OBD group." Light-duty vehicles and chassis certified heavy-duty vehicles receive a single certificate covering a unique combination of test group, evaporative/refueling family, and OBD group.

The unit of certification is slightly different for heavy-duty engines. Instead of receiving a single certificate that covers both exhaust and evaporative emission control characteristics, heavy-duty engines are issued separate certificates by "engine family" for engines having common exhaust characteristics and by evaporative/refueling families, if applicable.[26] Even though heavy-duty engine certificates are based on a different compliance unit, the concept behind allowable groupings remains consistent between light-duty vehicle and heavy-duty engine certification and compliance. Groupings share similar technologies, design features, and emission control characteristics. EPA proposed to slightly broaden grouping criteria for clean alternative fuel conversions and generally received favorable comment about the proposed flexibilities. EPA is adopting broader grouping criteria for both light-duty vehicles and heavy-duty engines.

The general concept behind groupings for the conversion program applies to all vehicle and engine age categories, although the specific criteria for designating conversion groups vary somewhat among the new, intermediate age, and outside useful life programs (*see* Section IV). Conversion manufacturers must use the applicable criteria to designate a conversion group, and must select a "worst case" emission data vehicle (EDV) or emission data engine (EDE) to represent the group for demonstration and notification purposes. The conversion EDV or EDE should represent the most challenging emissions compliance technology of all the models it represents. Use of a worst-case EDV/EDE gives EPA confidence that all models covered by a certificate in the case of OEM certification, or by EPA's acceptance of the conversion group demonstration in the case of conversion, comply with all applicable emission requirements, including exhaust emission standards, evaporative emission standards, OBD compliance requirements, and other criteria. Therefore conversion manufacturers may need to submit data from more than one EDV or EDE to represent the worst case condition for each of the applicable requirements.

OEMs have considerable ability to carryover test data between test groups/engine families and evaporative/refueling families of different model years. A manufacturer may use one set of data to support the certification application of a subsequent year's test group/engine family as long as the groups meet the regulatory grouping criteria and meet the same emission standards.[27] EPA is finalizing provisions that allow converters the same flexibility, that is, a converter is allowed to carryover data if the OEM did.

In addition to these data carryover provisions, EPA proposed to broaden the grouping criteria for clean alternative fuel conversions, but received comments requesting that the proposed criteria for designating test groups/engine families be broadened even further.[28]

Commenters especially sought the ability to combine vehicles/engines from multiple model years and/or multiple OEMs within a single conversion test group/engine family. EPA does not agree that the grouping flexibilities should be further expanded to allow conversion test groups/engine families to span multiple OEM model years or manufacturers. Emission control strategies may and often do differ in critical ways among manufacturers, or even among product lines of a single manufacturer. EPA did not receive any data or other evidence to alleviate concerns that these differences could result in variable emissions performance among vehicles/engines in a broader grouping, even if some features such as engine displacement are identical. For example, even in vehicles with the same engine displacement and cylinder configuration, other technical features are likely to be different enough to warrant concern that the emissions will be very different after the vehicles are converted. Different manufacturers rarely use identical emissions-related hardware and software. Furthermore, manufacturers often change components and strategies between model years as technology improves. The engine controller software will likely reflect these different strategies, so there is no assurance that a given conversion system will operate similarly or remain durable on one manufacturer's vehicle compared to another, or on different model year vehicles of an individual manufacturer. EPA does not have confidence that significant broadening of conversion test group/engine family criteria, or expansion of carryover/carry-backward/carry-across provisions can be allowed without compromising our assurance that the conversion system will achieve equivalent emission control across the full test group/engine family. EPA believes the criteria for conversion test group/engine family combinations, which were first presented in guidance on June 20, 2009 and which EPA is codifying in this final rule, represent an appropriate balance between reducing compliance burden for converters and fulfilling EPA's responsibilities to ensure that all vehicles/engines remain clean.

Because of the integral link between grouping criteria and selection of a worst case EDV/EDE to represent that group, EPA also requested comment on whether a worst case EDV/EDE would adequately represent test groups/engine families created under the proposed criteria. Most commenters stated that a worst case EDV/EDE is a reasonable approach. One commenter expressed concern about whether a worst case EDV/EDE would be sufficient to represent broader test groups. EPA will address this concern by retaining the ability to examine the conversion manufacturer's basis for EDV/EDE selection. Should EPA have concerns about whether the EDV/EDE adequately represents the grouping, EPA may request additional data from other

[26] Certain fuels such as diesel fuel do not have evaporative emissions standards.

[27] *See* 40 CFR 86.1827–01 and 40 CFR 86.001–24 for test group and engine family criteria. *See* 40 CFR 86.1839–01 for OEM carry-over provisions for light-duty and heavy duty chassis certified vehicles.

[28] EPA requested and received comment on the proposed test group/engine family grouping criteria, including the carryover of test data from one group to another, and on the related issue of EDV or EDE selection. The issues are interconnected because the narrower the grouping and carryover criteria, the less technical variability among vehicle or engine models within the group and the more likely that a single EDV or EDE will be representative.

vehicles or engines in the group. Please *see* the Response to Comments document for further discussion of this issue.

D. Mixed-Fuel and Dual-Fuel Conversions

EPA regulations require mixed-fuel and dual-fuel vehicles and engines to comply with all requirements established for each fuel or blend of fuels on which the system is capable of operating.[29] These requirements continue to apply to mixed- and dual-fuel conversions. Certain demonstration requirements could potentially be waived for clean alternative fuel conversions if the conversion manufacturer has not altered the OEM configuration of the vehicle or engine when operating on its original fuel. However, if the conversion of the vehicle or engine to dual-fuel or mixed-fuel operation alters the OEM certified configuration in any way while operating on the original fuel, then EPA requires the conversion manufacturer to demonstrate compliance for each fuel with all applicable exhaust emission standards, evaporative/refueling emission standards and OBD demonstration and notification requirements, appropriate for the age of the vehicle/engine as described in Section IV.

EPA will continue to allow a statement of compliance in lieu of test data for operation on the original fuel if the conversion manufacturer can attest that the conversion retains all the OEM fuel system, engine calibration, and emission control system functionality when operating on the fuel with which the vehicle/engine was originally certified. The conversion must also retain all the functionality of the OEM OBD system (if so equipped) when operating on the fuel with which the vehicle/engine was originally certified. The conversion manufacturer is required to submit data demonstrating compliance with the applicable requirements when the vehicle/engine is operating on the new alternative fuel.[30]

Because a mixed-fuel vehicle or engine operates on a fuel mixture, with the fuels combusted together at a variety of fuel blend ratios, mixed-fuel vehicles/engines are expected to demonstrate compliance when tested on any fuel blend ratio that is expected to occur during normal operation. EPA may require a mixed-fuel vehicle or engine conversion manufacturer to demonstrate compliance with applicable requirements on more than one fuel blend ratio.[31] For example, E–85 flexible-fuel vehicles would generally be tested on two fuel blend ratios—100% gasoline/0% ethanol and 85% ethanol/15% gasoline. Other types of mixed-fuel vehicles/engines would generally be tested on a fuel blend ratio that represents the worst case emission scenario. Conversion systems designed for a fluctuating fuel mix, such as a CNG/diesel fuel mixture, would generally be tested as they would normally operate rather than on a discrete mixed fuel blend ratio. Conversion manufacturers should work with EPA to make good engineering judgment decisions about the worst case EDV or EDE for mixed-fuel vehicles and engines.

EPA has specific concerns about canister purge in dual-fuel and mixed-fuel[32] conversions because of potential for uncontrolled evaporative emissions when the converted vehicle or engine is operating on the new alternative fuel. Although much of the OEM functionality is likely to remain fully operational on the original fuel after conversion to dual-fuel or mixed-fuel, OEM canister purge may have been designed to depend on the frequency and duration of engine operation on the original fuel. Therefore, for dual-fuel and mixed-fuel conversions, EPA is requiring the conversion manufacturer to test canister purge and submit data or to provide a separate attestation for evaporative emission canister purge. For vehicles and engines converted to dual-fuel or mixed-fuel operation, the attestation must include statements that the evaporative emissions canister purge continues to operate as originally designed while operating on each fuel. EPA expects the clean alternative fuel conversion manufacturer to supply a description of the canister purge operation while the vehicle or engine is operating on the alternative fuel. Conversion manufacturers may submit a statement of attestation rather than test data only if the canister purge operation properly purges hydrocarbon vapor from the evaporative emission canister when the vehicle/engine is operating on the alternative fuel.

E. Vehicle/Engine Labels, Packaging Labels, and Marketing

EPA proposed to maintain existing labeling requirements and also proposed to require some additional content on the conversion label. Comments on the labeling proposal were mixed. Some commenters suggested additional labeling requirements beyond those that were proposed. Other commenters opposed any new labeling requirements beyond those required in the original subpart F regulations. One commenter suggested allowing conversion manufacturers to supply the new information in marketing material rather than on the underhood or engine label. Several commenters supported the new labeling mandates, expressing that the new information would help with proper identification and application. EPA is finalizing the labeling requirements as proposed. We acknowledge that it may be challenging to fit all the information on an underhood or engine label; however, EPA believes that the new label content is important, as is clear labeling in general, to reduce the potential for misapplication (*e.g.,* installing a conversion system on a vehicle/engine that is not covered by the manufacturer's demonstration and notification to EPA). To address concerns about space limitations, EPA will allow the label information to be logically split between two labels that are both placed as close as possible to the original Vehicle Emission Control Information (VECI) or engine label. The newly required content includes: (1) The conversion test group/engine family and evaporative/refueling family; (2) the OEM test group/engine family and evaporative/refueling family, plus the OEM vehicle/engine model year to which the conversion system is applicable; and (3) a description of the age-based demonstration through which the conversion system obtained its tampering exemption.

Conversion manufacturers are required to submit the vehicle/engine label information to EPA as part of the notification process. Failure to supply or install compliant labels leaves conversion manufacturers and installers subject to prosecution for tampering.

EPA sought comment about whether conversion manufacturers should be required to submit to EPA the Vehicle Identification Number (VIN) of any converted vehicle, in addition to vehicle label information. EPA received some comments stating that VIN tracking is not necessary and other comments

[29] *See, e.g.,* 40 CFR 86.1810–01, 40 CFR 86.1811–04, 40 CFR 86.1812–01, 40 CFR 86.1813–01, 40 CFR 86.1814–02, 40 CFR 86.1815–02, 40 CFR 86.1816–08.

[30] Compliance testing and data submission requirements vary by vehicle age and mileage. *See* Section IV.

[31] *Id.*

[32] The proposal discussed dual-fuel vehicles/engine evaporative emissions concerns; however, these flexibilities and restrictions are also applicable to mixed-fuel vehicles/engines, since mixed-fuel vehicles/engines function similarly to dual-fuel vehicles/engines. Vehicles and engines converted to mixed-fuel operation can generally operate on the new alternative fuel(s), on the original fuel(s), or on a mixture of the fuels.

stating that VIN tracking could be useful. EPA has evaluated comments and is not adopting a VIN tracking requirement. It is neither practical for EPA to develop and maintain a VIN tracking system nor is it feasible for EPA to enforce against installers who may fail to report VINs. EPA believes that the required label is sufficient to inform concerned parties that a vehicle or engine has been converted.

EPA expects any marketing material associated with any aftermarket fuel conversion product to be consistent with and not contravene the information required on the vehicle/engine or packaging labels. In addition, the marketing material and label information for a given conversion system must always be consistent with the conversion manufacturer's demonstration and notification to EPA for that system.[33] Conversion manufacturers who market conversion systems for use on vehicles/engines other than the test group/engine families and evaporative/refueling families covered by the demonstration and notification may be liable for a tampering violation for each vehicle/engine to which conversion system is misapplied.

F. Compliance

Clean alternative fuel conversion manufacturers will continue to be subject to all certification requirements and warranty, defect, and recall requirements applicable to new vehicle/engine manufacturers in 40 CFR parts 85 and 86.[34]

EPA plans to audit conversion manufacturers and enforce against violations.

1. Emission Standards

EPA has previously determined that it is appropriate to require vehicle and engine fuel conversions to meet the same emission standard as required for the originally certified OEM vehicle or engine. OEM standards continue to apply for the required test cycles, including intermediate useful life standards and full useful life standards where applicable.[35] If a converter designates a conversion group that combines multiple OEM test groups/engine families, the most stringent OEM standards represented within that group become the applicable standards for the conversion group. For example, if a converter establishes a conversion test group that includes OEM test groups originally certified to Tier 2, Bin 4 and Bin 5 standards, all the vehicles in the combined conversion test group are subject to the more stringent Tier 2, Bin 4 standard.

All applicable OEM certification standards are also applicable to fuel conversions unless specifically exempted, including heavy-duty Family Emission Limits (FELs), light-duty 15 year/150,000 mile Tier 2 standards, and greenhouse gas standards. In addition, any newly-required test procedures or standards that apply to the certification of OEM alternative fuel vehicles/engines would also apply to fuel conversions.

EPA sought comment about whether to require a statement of compliance or exhaust demonstration requirement for light-duty vehicle US06 standards. Most commenters stated that EPA should not add the US06 drive cycle and standard to the demonstration requirements for alternative fuel vehicles. At this time, EPA is not adding a US06 standard for clean alternative fuel vehicle conversions, since US06 testing is not required for certification of OEM alternative fuel vehicles.

EPA received comment requesting clarification about whether a manufacturer may certify a clean alternative fuel conversion to a more stringent standard than the OEM did. EPA does allow fuel conversion manufacturers to certify to more stringent standards than the standards to which the OEM vehicle/engine was certified as long as the vehicles/engines in the test group/engine family demonstrate compliance with the standard in all modes of operation (*see* III.F.1.c).

a. Light-Duty and Heavy-Duty Chassis Certified Vehicle Gross Vehicle Weight Classes and Alternative Fuel Exceptions

Emission standards for light-duty passenger cars, light-duty trucks, medium-duty passenger vehicles, and Otto-cycle heavy-duty chassis certified vehicles less than 14,000 pound gross vehicle weight are codified in 40 CFR part 86, subpart S.[36] Standards are specific to vehicle type and gross vehicle weight ratings.

Light-duty vehicles, both OEM vehicles and conversions, are currently exempt from Supplemental Federal Test Procedure (SFTP) standards and cold carbon monoxide (CO) standards when certified on alternative fuels.[37] However, for dual-fuel and mixed-fuel light-duty vehicles, SFTP and cold CO standards do apply while the vehicle is operating on gasoline or diesel fuel.[38] At this time, EPA is not adopting SFTP standards and testing for alternative fueled light-duty vehicles for either OEM vehicles or clean alternative fuel conversions (*see* Section IV.A.3.a).[39] However, as stated in the proposed rule,[40] if future SFTP standards are amended to apply to vehicles operated on alternative fuels, those standards and test procedures would also be applicable to fuel conversions.

A commenter questioned whether light-duty vehicle conversions are subject to greenhouse gas standards. Conversions are subject to the same standards that applied to the OEM vehicle. Thus vehicle conversions are subject to greenhouse gas standards if the OEM vehicle was subject to greenhouse gas standards, unless the conversion manufacturer qualifies for exemption as a small business.[41] There are also conditional exemptions for light-duty greenhouse gas requirements available to low volume manufacturers. *See* 40 CFR 86.1801–12(k) for more information. *See* Section V for technical amendments relating to light-duty greenhouse gas compliance.

b. Heavy-Duty Engine Types and Gross Vehicle Weight Classes

Heavy-duty engine standards are categorized in several ways. There are

[33] If any marketing material implies or states that the installation of the conversion system is legal or appropriate for vehicles/engines not listed in the documentation provided to EPA, EPA would deem the marketing material to be evidence that the marketer caused a customer to install an inappropriate conversion system and thus tampered with the vehicle/engine.

[34] The OEM certification requirements and warranty, defect, and recall requirements apply even if they are moved to other locations in the CFR.

[35] In almost all cases the standards in place for an OEM vehicle or engine continue to apply to the converted vehicle or engine. The only exceptions involve fuel specific standards (or exemptions from standards) that were not applicable to the OEM configuration but are applicable to the converted configuration, or vice versa. In those cases the converted vehicle/engine will be held to the fuel-specific standard that would have been in place for an OEM vehicle/engine certified to operate on that fuel. For example, diesel-fueled vehicles are currently exempt from evaporative emission standards but vehicles fueled with most other fuels are not. If a diesel fuel vehicle is converted to run on an alternative fuel, the converted vehicle will be held to the evaporative emission standards that would have applied to an OEM vehicle certified operating on that fuel.

[36] For purposes of this preamble, this group of vehicles will be described as light-duty and heavy-duty chassis certified vehicles from this point forward.

[37] All medium-duty passenger vehicles are also currently exempt from SFTP standards, regardless of fuel type. 40 CFR 86.1811–04(f)(1). Medium duty passenger vehicles, operating on gasoline, do have a cold CO standard (40 CFR 86.1811–04(g)).

[38] 40 CFR 86.1810–01(i)(4) and 40 CFR 86.1811–04(g).

[39] 40 CFR 86.1811–04(f).

[40] 75 FR 29613 (May 26, 2010).

[41] *See* 40 CFR 86.1801–12(j).

divisions by engine type, either compression ignition or spark ignition, and there are divisions by application gross vehicle weight. Standards for heavy-duty engines are set forth in 40 CFR part 86, subpart A. Generally, heavy-duty engine standards apply to engines installed in vehicles with a gross vehicle weight rating (GVWR) greater than 8,500 pounds. OEM manufacturers of compression ignition engines in complete heavy-duty vehicles between 8,500 and 14,000 pounds may optionally chassis certify using the provisions in 40 CFR part 86, subpart S. EPA proposed to require conversion manufacturers to meet the same standards that applied to the OEM. Thus converters of engine certified heavy-duty vehicles between 8,500 and 14,000 pounds would have been required to meet engine standards, even if chassis certification test procedures were available to the OEM. EPA received numerous comments requesting relief from this proposed requirement. EPA evaluated these comments and has determined that it is appropriate to allow conversion manufacturers to use chassis test procedures that were available to the OEM, even if the OEM chose to engine certify. Thus EPA is adopting provisions whereby manufacturers of conversion systems for engines that would have qualified for chassis certification at the time of OEM certification may use those procedures, even if the OEM did not.[42] Conversion manufacturers choosing this option must designate test groups using the appropriate criteria as prescribed in this rule and meet all vehicle chassis certification requirements set forth in 40 CFR part 86, subpart S.

c. Dual-Fuel and Mixed-Fuel Standards

EPA as a matter of policy requires dual-fuel and mixed-fuel[43] vehicles and engines to certify operation on all fuel types to the same emission standards. A dual-fuel natural gas-gasoline vehicle, for example, must certify to the same Tier 2 bin level for both natural gas and gasoline. The same policy applies to evaporative/refueling standards and family emission levels (FELs) for engines. Therefore, conversion manufacturers of systems that convert single-fuel OEM systems to dual-fuel or mixed-fuel systems must certify to the OEM standard, even if test data demonstrate that the converted vehicle or engine is able to meet a more stringent standard while operating on the alternative fuel. If a conversion manufacturer wishes to certify to a lower standard on all fuels, a demonstration showing compliance with the lower standard is required on all fuels.[44] This policy will continue to apply to all vehicle/engine fuel conversions, regardless of age or compliance program. The notification process for a dual-fuel or mixed-fuel vehicle/engine will require separate submissions for groups of vehicles/engines with different standards, unless testing is conducted which demonstrates compliance on all fuels with the most stringent standards in the group. However, test data from an EDV or EDE demonstrating compliance with a lower standard may be able to be carried across to other vehicles or engines that meet the criteria available for the combination test groups and engine families, described in Sections IV.A.2 and IV.B.2.

2. Useful Life

In the rulemaking that established the original aftermarket conversions certification program, EPA determined it was not appropriate to extend the useful life of a conversion beyond that of the original vehicle given that conversions generally rely on many original vehicle components for proper operation.[45] EPA's revised program leaves this determination unchanged such that the applicable useful life of a converted vehicle or engine does not extend beyond the useful life of the original vehicle or engine. Thus, the useful life of the conversion will continue to end at the same time as the useful life of the original vehicle/engine, including any optional useful life standards to which the OEM certified the original vehicle/engine.[46]

3. On Board Diagnostics (OBD)

As part of the good engineering judgment requirement described in Section III.B, OEM vehicles or engines subject to OBD requirements are required to have properly functioning OBD systems once converted.[47] OBD systems are designed to monitor critical vehicle or engine emission control components and to alert the vehicle operator or State emissions inspection official to malfunction, deterioration, or other problems that might cause excessive emissions. States rely on OBD systems to flag vehicles that exceed Inspection and Maintenance thresholds and that may require repair. OBD systems are also designed to store diagnostic information in the vehicle's/engine's computer to assist technicians in diagnosing and repairing the problem. The conversion OBD system is part of the emission control system and must include any new monitoring capability necessary to identify potential emission problems associated with the new fuel. In addition, consistent with other EPA regulations, this regulation requires that any dual-fuel or mixed-fuel clean alternative fuel conversion OBD system remain fully functional on the original fuel and function properly on the conversion fuel.[48]

4. Durability Testing

Conversion manufacturers must conduct durability testing for both exhaust and evaporative emissions to determine expected useful life deterioration. Durability procedures for light-duty vehicles and heavy-duty chassis certified vehicles are codified in 40 CFR 86.1823–01, 86.1824–01, 1824–07, 1824–08, and 86.1825–01, 85.1825–08. Durability procedures for heavy-duty engines are currently set forth in 40 CFR 86.096–24, 86.098–24, 86.001–24, 86.094–26, 86.001–26, 86.0004–26, 86.094–28, *et al.* In lieu of durability testing, these regulations provide that small volume manufacturers and qualified small volume test groups/engine families may be eligible to use EPA assigned deterioration factors to predict the emission rates at the end of a vehicle's or engine's useful life. *See* Section IV.B.3.c for more information.

EPA requested comment as to whether the proposed durability procedures were appropriate for small

[42] These provisions (and available options) apply to 8,500 to 14,000 GVWR Otto-cycle complete and incomplete heavy-duty vehicles for model year 2001 and forward, and for 8,500 to 14,000 GVWR compression ignition engines in complete and incomplete heavy-duty vehicles for model year 2007 and forward. *See* 40 CFR 86.1801–01, 86.1816–05, and 86.1863–07.

[43] The proposed rule referred to dual-fuel vehicles/engine standards; however, the flexibilities and restrictions applicable to dual-fuel vehicles/engines are also applicable to mixed-fuel vehicles/engines, since mixed-fuel vehicles/engines function similarly to dual-fuel vehicles/engines. Vehicles and engines converted to mixed-fuel operation can generally operate on the new alternative fuel(s), on the original fuel(s), or on a mixture of the fuels.

[44] For mixed-fuel vehicles, a demonstration may be required on the new fuel(s), on the original fuel(s), and on a worst-case mixture of the fuels.

[45] 59 FR 48488 (Sep. 21, 1994).

[46] Examples of optional useful life include those described in 40 CFR 86.1805–04(b) and (e).

[47] OBD systems were phased in for light-duty and heavy-duty complete vehicles beginning in model year 1994. *See* 40 CFR 86.1806–01, 86.1806–04, and 86.1806–05. OBD systems were phased in for heavy-duty vehicles weighing less than 14,000 pounds GVWR beginning in model year 2004. *See* 40 CFR 86.005–17. OBD requirements for heavy-duty engines for vehicles over 14,000 pounds began phase-in in model year 2010. *See* 40 CFR 86.010–18. According to 40 CFR 86.010–18(o)(1)(v), engines in vehicles over 14,000 pounds GVWR certified on alternative fuels are exempt from OBD requirements for model years 2010–2012.

[48] Multi-fueled vehicles, such as dual-fuel and mixed-fuel vehicles must be compliant on both fuels. *See,* for example, 40 CFR 86.1811–01.

and large volume conversion manufacturers. EPA also requested comment on whether the proposed procedures provided adequate assurance that the emission control systems in converted vehicles and engines would continue to function properly over time. Comments ranged from requests for small volume conversion manufacturer relief from the stringency of the EPA assigned deterioration factors to comments that the regulations should require more durability assurance from conversion manufacturers. EPA is adopting the durability procedures largely as proposed. *See* the assigned deterioration factors discussion in Section III.G.2 and the Response to Comments document for a more detailed discussion.

5. Warranty

The CAA requires manufacturers to warrant that a vehicle or engine is (1) designed, built, and equipped to conform to applicable regulations and (2) free from defects in material and workmanship which cause the vehicle or engine to fail to conform to applicable regulations for its useful life.[49] For light-duty vehicles, this defect warranty is applicable through two years or 24,000 miles of use (whichever first occurs).[50] Specified major emission control components, including catalysts, engine control units (ECUs), and OBD are warranted for eight years or 80,000 miles of use (whichever first occurs).[51] For Otto-cycle heavy-duty engines and vehicles (complete and incomplete) and light heavy-duty diesel engines, the warranty period is at least 5 years or 50,000 miles, whichever first occurs. For all other heavy-duty diesel engines, the warranty period is at least 5 years or 100,000 miles, whichever first occurs. For all heavy-duty engines the warranty period may not be shorter than the basic mechanical warranty period that the OEM provides.[52] Under EPA's previous aftermarket conversions program, conversion manufacturers had to accept in-use liability for warranty and recall as a condition for gaining exemption from tampering.

EPA will continue to apply this approach to in-use liability for warranty for all clean alternative fuel conversions. Under this policy, the clean alternative fuel conversion manufacturer would normally be held accountable for fixing problems that occur as the result of conversion, while the OEM would generally retain responsibility for the performance of any parts or systems that retain their original function following conversion and are unaffected by the conversion. It is important that both clean alternative fuel conversion manufacturers and consumers understand these provisions because they could result in a transfer of warranty liability for certain failed components from the OEM to the converter. A reasonable indicator of cause and accountability might be whether the failure of the part or system is also occurring in non-converted configurations of the same vehicle/engine. If so, the problem is most likely not related to conversion, and the OEM would typically remain liable for performing repairs. If only converted vehicles/engines are experiencing the problem, it would be appropriate to trace the problem to the conversion and to hold the converter responsible for warranty repairs.

EPA sought comment on the best way to inform consumers about the possibility that converting their vehicle or engine, even with an EPA compliant system, may transfer portions of their OEM warranty liability to the converter. EPA received mixed comment on this issue. OEMs stated that EPA should require information on the underhood and other vehicle labels to indicate that conversion might void the OEM warranty. Alternative fuels advocates stated that EPA should mandate label statements that conversion does not void the OEM warranty. For practical reasons involving space restrictions on the underhood/engine label, EPA is not finalizing any additional labeling requirements with regard to warranty. However, EPA recognizes that consumers need to understand the warranty implications of conversions and plans to convey this information to the public through outreach materials, Web site postings, and other communication channels.

6. Other Provisions Applicable to Conversion Manufacturers

As stated above, all clean alternative fuel conversion manufacturers continue to be subject to labeling, warranty, and certification requirements applicable to new vehicle and engine manufacturers in 40 CFR parts 85 and 86.[53] [54] Conversion manufacturers will also continue to be exempt from fleet averaging and the averaging, banking, and trading credit programs available to OEMs as well as from the fuel economy labeling program in 40 CFR part 600.

Conversion manufacturers are subject to the recall regulations in 40 CFR part 85, subpart S and the emission defect reporting requirements in 40 CFR part 85, subpart T. If EPA determines that a substantial number of vehicles or engines in a class or category do not meet applicable emission standards in actual use even though they are properly maintained and used, EPA can require the conversion manufacturer to recall and fix affected vehicles/engines.[55] All conversion manufacturers are also required to report to EPA certain defects affecting emission-related parts.

Sections 206, 207 and 208 of the Act authorize EPA to establish procedures to ensure that production vehicles and engines comply with emission standards when they are new and continue to comply with emission requirements after they are in customer service. These provisions provide EPA broad authority to conduct testing as the Administrator deems necessary to monitor in-use vehicle and engine compliance. These emission testing programs cover clean alternative fuel conversions as well as OEM vehicles/engines.

7. Misapplication

EPA may revisit the age-based approach should there at any time be evidence of widespread conversion system misapplication that can be traced to differences among the age-based demonstration or notification requirements. For example, if exempted outside useful life conversion systems are commonly marketed to vehicles/engines that are still within their useful life, EPA would not only consider the misapplication to be tampering, but would also consider revising this rule to eliminate or constrain the age-based demonstration approach.

G. Regulatory Procedures for Small Volume Manufacturers and Small Volume Test Groups, and Small Volume Engine Families

EPA regulations afford certain flexibilities to small volume manufacturers in recognition of special compliance challenges they may face. The clean alternative fuels conversion industry has historically been comprised of companies that qualify for small volume manufacturer status. Eligibility criteria and special procedures available to small volume

[49] 42 U.S.C. 7541.

[50] CAA section 207(i)(1).

[51] CAA section 207(i)(2).

[52] 40 CFR 86.004–2.

[53] The labeling, warranty and certification requirements apply even if they are moved to other locations in the CFR.

[54] The 1994 rulemaking did not require fuel economy labeling to qualify for an exemption from the tampering prohibition. Similarly, this rule does not add a fuel economy labeling requirement or ABT provisions.

[55] CAA section 207(c).

conversion manufacturers and small volume test groups and engine families are discussed below.

1. Definition of Small Volume Manufacturers, Small Volume Test Groups, and Small Volume Engine Families

a. Light-Duty and Heavy-Duty Chassis Certified Vehicles

EPA regulatory procedures specific to light-duty and heavy-duty chassis certified vehicle small volume manufacturers and small volume test groups are set forth in 40 CFR 86.1838–01. A conversion manufacturer is eligible for small volume manufacturer status for most light-duty and heavy-duty chassis certified vehicle procedures if the conversion manufacturer's annual model year motor vehicle and engine total sales volume in all States and territories of the United States (or aggregate sales volume for manufacturers in an aggregate relationship) is less than 15,000 units.[56] (For sales aggregation rules for related manufacturers, refer to 40 CFR 86.1838–01(b)(3)). A large volume manufacturer may also use small volume manufacturer certification procedures for test groups of vehicles which total less than 15,000 units under certain circumstances. For small volume test group eligibility criteria for large volume manufacturers who participate in aggregate relationships, refer to 40 CFR 86.1838–01(b)(2) for more details.

b. Heavy-Duty Engines

The EPA regulatory provisions for small volume heavy-duty engines and qualified small volume engine families are promulgated in 40 CFR 86.094–14, 86.095–14, 86.098–14, and 86–096–24(e)(2). Heavy-duty engine small volume manufacturer status is tiered. Certain procedures apply to manufacturers with aggregate sales of less than 301 units, and other procedures may apply to manufacturers with aggregate sales volumes less than 10,000 units. For sales aggregation rules, refer to 40 CFR 86.094–14(b)(2) and 86.094–14(b)(5). For small volume engine family eligibility criteria for large volume manufacturers, refer to 40 CFR 86–096–24(e)(2) for more details.

2. Assigned Deterioration Factors

All light-duty and heavy-duty chassis certified vehicle small volume manufacturers or qualified small volume test groups are eligible to use assigned deterioration factors in lieu of durability testing to predict emission rates at the end of a vehicle's useful life.[57] EPA assigned deterioration factors for light-duty and heavy-duty chassis certified vehicles are authorized in 40 CFR 86.1826–01 and are periodically updated by EPA via manufacturer guidance letters.[58]

Heavy-duty engine small volume manufacturers and qualified small volume engine families may also be eligible for assigned deterioration factors instead of conducting durability demonstrations.[59] Under the current regulations, heavy-duty manufacturers with sales volumes of less than 10,000 units may be eligible to use assigned deterioration factors determined by EPA.

Because assigned deterioration factors are determined assuming the vehicle or engine is new, EPA is adopting an allowance for small volume conversion manufacturers and qualified small volume conversion test groups/engine families to use deterioration factors, proportionate to the vehicle or engine age under certain conditions. This will help create a level playing field for older vehicles and engines that have already experienced some of their expected emissions degradation. Conversion manufacturers are eligible to use scaled deterioration factors for vehicles or engines that have accumulated more than 10,000 miles. Scaled deterioration factors allow a proportionate scaling of the EPA assigned deterioration factor, if applicable, to demonstrate compliance with the intermediate and/or full useful-life standards. *See* Section IV.B.3.c.i for more detail.

EPA received several comments about the use of assigned deterioration factors for conversion manufacturers. One commenter suggested that EPA should require converters who use assigned deterioration factors to submit a statement confirming conversion system durability and explaining why the system will not harm the emission control system or degrade the emissions. EPA agrees with this comment. Assigned deterioration factors, whether scaled or not, are intended to provide small volume manufacturers with a streamlined pathway for demonstrating that the vehicle or engine will meet full useful life standards. However, fuel conversion presents new challenges to assessing whether the engine and emission components will remain durable for the full useful life of the vehicle/engine. Therefore, EPA is adopting a requirement that conversion manufacturers using assigned deterioration factors must present detailed information to confirm the durability of all relevant new and existing components and to explain why the conversion system will not harm the emission control system or degrade the emissions.

3. Changes in Small Volume Status

If a conversion manufacturer's annual sales volume may surpass the threshold for small volume manufacturer or qualified test group/engine family status for a given model year,[60] the conversion manufacturer must satisfy the regulatory requirements required for large volume manufacturers, even if the conversion manufacturer initially complied properly (in a previous model year) with the small volume requirements. Conversion manufacturers should be aware that this status change could result in new demonstration and notification requirements involving new testing under both the new and intermediate age programs. EPA is requiring conversion manufacturers to report to EPA the number of conversion systems they have sold annually in an end-of year submission.

A change from small volume status to large volume status could occur in several different situations. First, if a conversion manufacturer has changed volume status and is therefore required to recertify a vehicle or engine as a large volume manufacturer, all large volume test procedures and requirements would need to be conducted prior to the issuance of the new certificate. Second,

[56] 40 CFR 86.1838–01. Because conversion manufacturers, unlike OEMs, can sell their products for multiple model years, to determine small volume status, the number of conversions is the sum of the calendar year intermediate age conversions, outside useful life conversions, and the same conversion model year certified clean alternative fuel conversions. The number of conversions will be added to any other vehicle and engine sales accounted for using 40 CFR 86.1838–01 or 40 CFR 86.098–14 as appropriate to determine small volume status.

[57] *See* 40 CFR 86.1838–01(c)(1). Manufacturers not eligible for small volume manufacturer or small volume test group status are required to follow durability procedures in 40 CFR 86.1823–01, 86.1923–08, 86.1824–01, 86.1824–07, 86.1824–08, 86.1825–01, and 86.1825–08.

[58] The current light-duty and heavy-duty complete vehicles assigned deterioration factor guidance document issued pursuant to 40 CFR 86.1826(b)(1)(ii) and (b)(2)(i)(c), is available electronically at *http://iaspub.epa.gov/otaqpub/display_file.jsp?docid=14285&flag=1*. The current heavy-duty engine assigned deterioration guidance letter is available electronically at *http://iaspub.epa.gov/otaqpub/display_file.jsp?docid=14183&flag=1*.

[59] *See* 40 CFR 86.094–14, 40 CFR 86.095–14, 40 CFR 86.096–14, 49 CFR 86.098–14, 40 CFR 86–096–24(e)(2).

[60] To determine small volume manufacturer status the number of conversions is the sum of the calendar year intermediate age conversions, outside useful life conversions, and the same conversion model year certified clean alternative fuel conversions. The number of conversions will be added to any other vehicle and engine sales accounted for using 40 CFR 86.1838–01 or 40 CFR 86.098–14 as appropriate to determine small volume manufacturer status.

if a small volume conversion manufacturer crosses the annual sales volume threshold and becomes a large volume conversion manufacturer, the conversion manufacturer must update the demonstration and complete all applicable large volume requirements for the intermediate age vehicle or engine conversions which are no longer eligible for small volume manufacturer or small volume test group/engine family.

EPA received comment asking for compliance lead-time for conversion manufacturers that have outgrown small volume status and have become a large volume conversion manufacturer. EPA does not agree that a defined lead-time is necessary, since conversion manufacturers should be able to predict in advance and plan for changes in small volume status.

IV. Clean Alternative Fuel Conversion Program Details

As summarized earlier in this preamble EPA is revising the demonstration and notification procedures for clean alternative fuel conversions based on the age of the vehicle or engine to be converted. All conversion manufacturers are required to demonstrate to EPA that the conversion satisfies technical criteria to qualify as a clean alternative fuel conversion, but demonstration and notification requirements are different depending on vehicle or engine age. The age-specific requirements are summarized in Table IV–1 and are presented in detail below.

The age-based demonstration and notification requirements stem from both legal and practical considerations. The distinctions between the demonstration required for new, intermediate age, and outside useful life vehicles/engines address the issues posed by the absence of applicable emission standards for converted vehicles/engines that have exceeded full useful life. This approach also recognizes that new vehicles/engines, at the time of conversion, should resemble the certified OEM configuration from the perspective of emissions degradation and should therefore be held to the same durability and deterioration factor demonstrations required for OEM certification. Intermediate age vehicles/engines fall between the new and outside useful life categories. While useful life standards still apply, certain certification requirements are no longer suitable for aging vehicles/engines.

As with demonstration protocols, EPA believes different notification protocols are appropriate for the three age classes. The notification protocols reflect the level of detail EPA has determined to be necessary for conversion manufacturers to adequately document and for EPA to review the required emissions demonstration. The age-based notification system should streamline the notification process and create a simple system that both small and large conversion manufacturers can easily understand and follow.

TABLE IV–1—OVERVIEW OF PROGRAM ELEMENTS [61]

Vehicle/engine age			Conversion manufacturer requirement		Certificate of conformity	Compliance detail preamble section
Category	Applicability	Example for 2011 [62]	Demonstration	Notification		
New	MY > or = current calendar year—1.	MY 2010, 2011, 2012 and < useful life mileage.	Exhaust, evap, and OBD testing [63].	Certification application.	Yes	IV.A
Intermediate age	MY < or = current calendar year—2 and within useful life.	MY 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009 and < useful life mileage.	Exhaust and evap testing [63] + OBD scan tool test and attestation.	Compliance submission [64].	No	IV.B
Outside useful life	Exceeds useful life.	MY 2001 and older or > full useful life mileage.	Technical justification [65] and OBD scan tool test and attestation.	Compliance submission [64].	No	IV.C

A. New Vehicle and Engine Clean Alternative Fuel Conversion Certification Program

EPA is requiring that conversions of new vehicles/engines (as defined for purposes of this preamble) [66] be covered by a certificate of conformity in order to qualify for an exemption from the tampering prohibition. EPA will also allow, but not require, conversions of intermediate age vehicles and engines to qualify for an exemption from the tampering prohibition by obtaining a certificate of conformity (*see* Sections IV.A.1.b. and IV.B). Certification satisfies the statutory tampering exemption prerequisites that the conversion is "for use of a clean alternative fuel" and that the converted vehicle "complies with the applicable standards under section 202." [67]

EPA believes that certification of clean alternative fuel conversions remains an appropriate demonstration of compliance with useful life standards for new vehicles and engines. New vehicles and engines have not yet experienced deterioration and are still likely to be representative, for purposes of emissions, of the technical condition of the vehicle or engine that the OEM used for EPA certification. Thus the certification process is suitable for and may be directly applied to new vehicle and engine clean alternative fuel conversions.

[61] *See* Section X of this preamble for more compliance details.

[62] This example is for Light-duty Tier 2 vehicles operating in the 2011 calendar year which have a useful life of 10 years or 120,000 miles.

[63] Exhaust and evap refers to all exhaust emission testing and all evaporative emission and refueling emission testing required for OEM vehicle/engine certification, unless otherwise excepted. OBD testing refers to all OBD demonstration testing as required for OEM vehicle/engine certification. OBD scan tool test refers to the procedure described in section IV.B.3.d.

[64] The compliance notification process for intermediate age and outside useful life conversions will be electronic submission of data and supporting documents.

[65] The technical justification may include data from exhaust and evaporative emissions testing.

[66] *See* footnote 8.

[67] CAA 203(a)(3).

EPA also believes that a certification demonstration requirement for new vehicle and engine conversions is prudent to maintain a level playing field for OEMs and conversion manufacturers. The certification requirement for new vehicle and engine conversions reduces any incentive that might otherwise exist for OEMs to circumvent requirements by certifying a traditional configuration and then converting it, rather than certifying the alternative fuel configuration in the first place. New vehicles represent the vast majority of clean alternative fuel conversion activity. For model year 2009, only two light duty vehicle fuel conversion certificates out of 60 were issued based on data from a vehicle that was more than one year old. EPA believes that a new vehicle and engine certification requirement will continue to cover most newly developed clean alternative fuel conversion systems and therefore will preserve existing EPA control over their technical viability and environmental performance. While new vehicle and engine clean alternative fuel conversion manufacturers will continue to be subject to certification requirements, they will benefit from reduced burden because the tampering exemption conferred by certification is generally retained as the conversion test group/engine family covered by the exemption ages. This allows conversion manufacturers to continue to sell their products as vehicles and engines age without renewing certificates and paying further certification fees.[68]

This final rule retains existing regulatory procedures for demonstration, notification, and compliance documents for clean alternative fuel conversion of new vehicles and engines. The demonstration of compliance with applicable standards will continue to use the same certification procedures previously applicable to conversion manufacturers with a few technical amendments and other allowances.[69] The notification process will also remain unchanged for conversion of new vehicles and engines. Conversion manufacturers will continue to submit applications, including test data, certification fees, and other required information to EPA. The compliance document, a certificate of conformity, will also remain unchanged for conversion of new vehicles and engines.

1. Applicability

a. New Vehicles and Engines

EPA defines "new and relatively-new" (as discussed above in Section I in this preamble we refer to "new and relatively-new" vehicles and engines as "new") vehicle or engine clean alternative fuel conversions as those for which the date of conversion is in a calendar year that is not more than one year after the original model year (MY) of the vehicle or engine.[70] For example, in calendar year 2011, certified conversion systems are required for MY 2010, MY 2011, and MY 2012 vehicles or engines.

As stated previously, EPA believes that certification is an appropriate requirement for new vehicles and engines because their emissions and mileage accumulation still largely reflect the vehicle's/engine's condition at the time of OEM certification. For consumer and conversion manufacturer clarity, it makes sense to compare vehicle model year to the current calendar year. This can be accomplished by applying the formula presented in Table IV–1 above. In practice this means that certification is required for vehicles or engines that are less than about two years old.

EPA received a few comments concerning the certification age threshold. Some comments suggested that the certification age threshold be shortened to one year, while other comments suggested that the certification provisions in the 1994 rulemaking be retained to keep the certification requirement for fuel conversion of all vehicles or engines within their useful life.

When developing the proposed and final rules, EPA considered many options for the age threshold between the new and intermediate age programs. The decision to finalize a threshold of about two years reflects several factors. These include the interest described previously in maintaining consistency with OEM requirements; the need for an OEM-like demonstration when converting vehicles and engines that still resemble the technical condition of the original product; and the fact that most conversions under the previous subpart F regulations took place within the first two years of a vehicle's or engine's regulatory useful life. We chose two years as the cut-off point for the "new" program to cover the vehicles and engines which are most likely to be converted, and which, because most of their useful life still remains, should be subject to the most rigorous demonstration requirement. No commenters provided data or technical justification to support a different age threshold than the one EPA proposed. Absent substantive evidence to support a different approach, EPA is finalizing the certification age threshold in the definition of "new and relatively-new" as proposed.

b. Older Vehicles and Engines

Manufacturers of clean alternative fuel conversion systems for vehicles and engines that are older than the age range defined above for new vehicles and engines, but still fall within the original vehicle's or engine's useful life, may opt for certification as their demonstration of compliance with useful life standards. These systems are also eligible for the intermediate age program described in Section IV.B.

2. Test Groups, Engine Families, and Evaporative/Refueling Families

a. Test Groups for Light-Duty and Heavy-Duty Chassis Certified Vehicles

i. Small Volume Manufacturers and Small Volume Test Groups

EPA will allow conversion manufacturers to combine several OEM test groups into larger conversion test groups, where the regulatory requirements of 40 CFR 86.1827–01 and 86.1820–01 are still satisfied. Test groups cannot span multiple durability groups.[71] However, all clean alternative fuel conversion manufacturers who meet the small volume manufacturer or small volume test group criteria in 40 CFR 86.1838–01 are eligible to use EPA assigned deterioration factors.[72] By default the assigned deterioration factors define the durability group. Therefore, select criteria in the durability group determination, 40 CFR 86.1820–01, the test group determination, 40 CFR 86.1827–01, and other additional criteria allow OEM test groups to be combined into a single clean alternative fuel conversion test group.

Vehicles may be placed into the same clean alternative fuel conversion test

[68] The exemption from tampering conferred by certification continues even after the certificate has expired. *See* Section IV.A.4.a.

[69] Technical amendments are described in Section V. *See* section IV.B.3.c.i for a description of the scaling of assigned deterioration factors for small volume manufacturers who conduct demonstration testing on a vehicle/engine with over 10,000 miles.

[70] OEM model years are often introduced ahead of the calendar year. Thus, to calculate which conversions must be certified, subtract the original vehicle/engine model year from the current calendar year. If the difference is one or less than one, then a certified conversion is required to qualify for the tampering exemption. If the difference is more than one, then the conversion may comply with the intermediate age or outside useful life provisions as applicable.

[71] 40 CFR 86.1827–01.

[72] 40 CFR 86.1826–01.

group using good engineering judgment if they satisfy the following: [73]

(1) Same OEM and OEM model year [74]
(2) Same OBD group [75]
(3) Same vehicle classification (*e.g.* light-duty vehicle, heavy-duty vehicle)
(4) Engine displacement is within 15% of largest displacement or 50 CID, whichever is larger
(5) Same number of cylinders or combustion chambers
(6) Same arrangement of cylinders or combustion chambers (*e.g.* in-line, v-shaped)
(7) Same combustion cycle (*e.g.,* two stroke, four stroke, Otto-cycle, diesel-cycle)
(8) Same engine type (*e.g.* piston, rotary, turbine, air cooled versus water cooled)
(9) Same OEM fuel type (except otherwise similar gasoline and E85 flexible-fuel vehicles may be combined into dedicated alternative fuel vehicles)
(10) Same fuel metering system (*e.g.* throttle body injection vs. port injection)
(11) Same catalyst construction (*e.g.* beads or monolith, metal vs. ceramic substrate)
(12) All converted vehicles are subject to the most stringent emission standards used in certifying the OEM test groups within the conversion test group

EPA received many comments requesting broader test group criteria and one comment suggesting that EPA retain the narrower OEM test group criteria. No data were provided to support either position, and EPA is finalizing the criteria as proposed. *See* the Response to Comments document for further discussion of this issue.

a. Dual-Fuel and Mixed-Fuel Vehicle Carry-Across Procedures for Small Volume Manufacturers and Small Volume Test Groups

As described in Section III.F.1.c, dual-fuel and mixed-fuel vehicles cannot be certified to different standards for each fuel. Conversion test groups for dual-fuel and mixed-fuel vehicles cannot include vehicles subject to different OEM emission standards unless applicable exhaust and OBD demonstrations are also conducted for the original fuel(s) demonstrating compliance with the most stringent standard represented in the test group. However, if the vehicles otherwise meet the test group criteria described above, the exhaust emissions test data for the new alternative fuel from dual-fueled or mixed-fuel EDVs may be carried across to vehicles which otherwise meet the test group criteria above. Test data can only be carried across if the data demonstrate compliance with the most stringent standard among the vehicles to which they are being applied. This means that for dual-fuel or mixed-fuel conversions a conversion manufacturer must apply for multiple certificates if the OEM vehicles in the proposed test group combination were originally certified to different standards; however, the data acquired on the alternative fuel may be applicable to multiple certificates when the test group criteria above are otherwise met and the data demonstrate that the most stringent standard within the group is met.

ii. Large Volume Manufacturers

Large volume clean alternative fuel conversion manufacturers must create test groups according to the regulations in 40 CFR 86.1827–01. As required by these regulations, the conversion manufacturer must first create durability groups pursuant to 40 CFR 86.1820–01, and then divide those groups into test groups for the purposes of exhaust emissions testing.

b. Engine Families for Heavy-Duty Engines

i. Small Volume Manufacturers and Small Volume Engine Families

This final rule allows combinations of several original OEM engine families into larger conversion engine families. Engines can be placed into the same clean alternative fuel conversion engine family using good engineering judgment if they satisfy the following: [76]

(1) Same OEM
(2) Same OBD group after 2013
(3) Same service class (*e.g.* light heavy-duty diesel engines, medium heavy-duty diesel engines, heavy heavy-duty diesel engines)
(4) Engine displacements is within 15% of largest displacement or 50 CID, whichever is larger
(5) Same number of cylinders
(6) Same arrangement of cylinders
(7) Same combustion cycle
(8) Same method of air aspiration
(9) Same fuel type (*e.g.* diesel/gasoline)
(10) Same fuel metering system (*e.g.,* mechanical direct or electronic direct injection)
(11) Same catalyst/filter construction (*e.g.,* metal vs. ceramic substrate)
(12) All converted engines are subject to the most stringent emission standards. For example, 2005 and 2007 heavy-duty diesel engines may be in the same family if they meet the most stringent (2007) standards
(13) Same emission control technology (*e.g.,* internal or external EGR)

a. Dual-Fuel and Mixed-Fuel Engine Carry-Across for Small Volume Manufacturers and Small Volume Engine Families

Heavy-duty dual-fuel and mixed-fuel engines cannot be certified to different standards for each fuel.[77] Conversion engine families for dual-fuel and mixed-fuel engines cannot include engines subject to different OEM emission standards unless applicable exhaust and OBD demonstrations are also conducted for the original fuel(s) demonstrating compliance with the most stringent standard represented in the engine family. However, if the engines would otherwise meet the engine family criteria described above, the exhaust emissions test data for the new alternative fuel from dual-fuel or mixed-fuel test engines may be carried across to engines which otherwise meet the engine family criteria above. Test data can only be carried across if the data demonstrate compliance with the most stringent standard among the engines to which they are being applied. This means that for dual-fuel and mixed-fuel conversions, a conversion manufacturer must apply for multiple engine family certificates if the OEM engines in the proposed engine family combination were originally certified to different standards; however, the data acquired on the alternative fuel may be applicable to multiple certificates when the engine family criteria above are otherwise met and the data demonstrate that the most stringent standard within the conversion engine family is met.

ii. Large Volume Manufacturers

All large volume heavy-duty engine conversion manufacturers must create

[73] Of the criteria listed, 4–6 are from 40 CFR 86.1827–01(a) and 7–11 are from 40 CFR 86.1820–01. To provide flexibility in combining OEM test groups, these criteria do not include the precious metal composition and catalyst grouping statistic criteria in 40 CFR 86.1820–01.

[74] Fuel conversion manufacturers will continue to be able to use carry-over of test results from one model year to the next if the OEM exercised such flexibility in accordance with EPA regulations.

[75] On rare occasions, an OEM test group contains multiple OBD groups. When this occurs, EPA will allow the conversion test group to include the multiple OBD groups that are covered by the OEM test group.

[76] These criteria are consistent with the 2009 guidance letter, CISD 09–14, which can be accessed electronically at *http://iaspub.epa.gov/otaqpub/display_file.jsp?docid=20194&flag=1.* This guidance letter was amended in October 2010 as CISD 10–24. CISD 10–24 can be accessed electronically at *http://iaspub.epa.gov/otaqpub/display_file.jsp?docid=23319&flag=1.*

[77] *See* Section III.F.1.c.

engine families as set forth in 40 CFR 86.001–24.

c. Evaporative/Refueling Families

Conversion manufacturers are required to follow the regulatory provisions for designating evaporative and refueling families. These provisions are located in 40 CFR 86.1821–01 for light-duty vehicles and heavy-duty chassis certified vehicles and in 40 CFR 86.096–24(a)(12)–(13) for heavy-duty engines. If the clean alternative fuel conversion system continues to use the OEM evaporative/refueling emissions system in its original configuration, the conversion evaporative/refueling family will remain identical to the OEM evaporative/refueling family. If, however, the conversion requires an alternative evaporative/refueling system (as for pressurized fuels, such as CNG and LPG), then the conversion manufacturer may create a single evaporative/refueling family as long as the regulatory criteria for evaporative/refueling families are met. Small volume conversion manufacturers may use EPA assigned evaporative/refueling deterioration factors in lieu of evaporative/refueling durability demonstrations.

Clean alternative fuel conversion evaporative families for dual-fueled and mixed fuel vehicles and engines must not include vehicles and engines that were originally certified to different evaporative emission standards. Conversion evaporative/refueling families for dual-fuel and mixed-fuel vehicles/engines cannot include vehicles/engines subject to different OEM evaporative/refueling standards unless evaporative/refueling demonstrations are also conducted for the original fuel(s) demonstrating compliance with the most stringent standard represented in the evaporative/refueling family.

3. Certification Demonstration Requirements

Certification for clean alternative fuel conversions will follow the certification procedures, such as those specified in 40 CFR part 86, subpart A, B and/or S and 40 CFR part 1065 as applicable, subject to the exceptions and special provisions described in Section III.F.1.a and Section V, if applicable.

a. Exhaust Emissions

i. Light-Duty and Heavy-Duty Chassis Certified Vehicles

The exhaust emissions testing demonstration for light-duty and heavy-duty chassis certified vehicles must be conducted on a test group basis. The worst-case EDV from each test group must be used to demonstrate compliance with the most stringent standards represented among the OEM vehicles when they were originally certified. All applicable exhaust certification requirements and test procedures which are required in regulations for OEM certification are required for fuel conversion certification. Test procedures and certification requirements are currently located in 40 CFR part 86 and 40 CFR part 1065.

ii. Heavy-Duty Engines

The exhaust emissions testing demonstration for heavy-duty engines must be conducted on an engine family basis. The worst-case EDE from each engine family must be used to demonstrate compliance with the most stringent standards represented among the OEM engines when they were originally certified. All exhaust certification requirements and test procedures that are required in regulations for OEM certification are required for fuel conversion certification. Test procedures and certification requirements are currently located in 40 CFR part 86 and part 1065.

b. Evaporative/Refueling Emissions

EPA will retain the evaporative and refueling emissions test procedures and requirements promulgated in 40 CFR part 86 and part 1065 as the demonstration requirement for clean alternative fuel conversion certification. Please *see* the technical amendments discussed in Section V for fuel-specific amendments that apply to conversions to CNG (or LNG), LPG, or hydrogen fuels.

c. Durability Demonstration and Assigned Deterioration Factors

i. Small Volume Manufacturers and Small Volume Test Groups/Engine Families

a. Light-Duty and Heavy-Duty Chassis Certified Vehicles

As noted in Section III.G.2 above, small volume light-duty and heavy-duty chassis certified vehicle conversion manufacturers and eligible small volume test groups are permitted to use EPA assigned deterioration factors in lieu of exhaust and evaporative/refueling durability demonstrations. If the EDV has accrued more than 10,000 miles, the conversion manufacturer may use scaled assigned deterioration factors described in Section IV.B.3.c below.[78]

[78] This is due in part to the Fuel Economy testing requirements which effectively limit the testing of vehicles with more than 10,000 miles.

b. Heavy-Duty Engines

For consistency with light-duty vehicles, EPA also will allow heavy-duty engine conversion manufacturers who are eligible to use EPA assigned deterioration factors to use scaled assigned deterioration factors when the EDE has accrued more than 10,000 miles.

ii. Large Volume Manufacturers

Large volume conversion manufacturers are required to conduct all applicable durability testing demonstrations.

d. On-Board Diagnostics

EPA believes that a fully functional OBD system is valuable in sustaining long-term emissions control and therefore the same OBD requirements that apply to OEMs continue to apply to clean alternative fuel conversion systems. The certification demonstration requires a submission of emissions data to prove that the OBD continues to function and the Malfunction Indicator Light (MIL) illuminates at the proper thresholds as set forth in 40 CFR 86.1806–01, 86.1806–04, and 86.1806–05 for light-duty vehicles and heavy-duty chassis certified vehicles. If an OEM heavy-duty engine was certified with an OBD requirement, the conversion must also meet the applicable OBD requirements, unless an alternative fuel OBD requirement is otherwise excepted from the OBD regulations. Heavy-duty engine OBD requirements are promulgated in 40 CFR 86.007–17, 86.007–30, 86.010–18, and 86.010–38. In addition to conducting OBD testing as required for certification, conversion manufacturers must submit the following statement of compliance, if the OEM vehicles/engines are OBD equipped. "The test group/engine family converted to an alternative fuel has fully functional OBD systems and therefore meets the OBD requirements such as those specified in 40 CFR 86, subparts A and S when operating on the alternative fuel."[79]

4. Certification Notification Process

The conversion certification notification process is based on the OEM certification procedures, such as those specified in 40 CFR part 86 and part 1065, as applicable. The notification requirement continues to incorporate the entire OEM certification process. If the OEM certification process

[79] This statement was described in the proposal under statements of compliance that may be permitted; however, EPA believes that it is important to ask each conversion manufacturer to attest to this statement, even if OBD testing is conducted.

is amended in the future, the fuel conversion certification procedures will also change, unless otherwise specified at that time.

In addition, an OBD attestation is required as described in section IV.A.3.d and small volume conversion manufacturers and qualified small volume test groups/engine families using EPA assigned deterioration factors must present detailed information to confirm the durability of all relevant new and existing components and to explain why the conversion system will not harm the emission control system or degrade the emissions.

The certification process may permit several statements of compliance or attestations in lieu of test data in the application for certification. Some of these are found in the OEM certification regulations, such as 40 CFR part 86, subparts A, B, and S and 40 CFR part 1065. In addition, the following statements specific to dual-fuel and mixed-fuel clean alternative fuel conversion may be permitted in lieu of test data, if appropriate:

1. "The test group/engine family converted to dual-fuel or mixed-fuel operation retains all the OEM fuel system, engine calibration, and emission control system functionality when operating on the fuel with which the vehicle/engine was originally certified."

2. "The test group/engine family converted to dual-fuel or mixed-fuel operation retains all the functionality of the OEM OBD system (if so equipped) when operating on the fuel with which the vehicle/engine was originally certified."

3. "The test group/engine family converted to dual-fuel or mixed-fuel operation properly purges hydrocarbon vapor from the evaporative emission canister when the vehicle/engine is operating on the alternative fuel."

a. Certificate Expiration and Re-Certification

Conversion certificates expire on December 31 of the conversion model year for which they are issued. Conversion manufacturers who wish to renew a certificate that has expired may re-certify the same conversion group in subsequent years using the same data. To re-certify, the manufacturer would update the cover page of the application, re-enter the necessary data into EPA's on-line data submission Web site, and submit the certification fees.[80]

EPA received numerous comments about recertification. Many comments requested that EPA issue non-expiring certificates to spare manufacturers from the burden of re-certifying an already-certified test group or engine family. Manufacturers stated that they must re-certify to retain eligibility for various tax credits and other incentives that require a valid certificate, as well as to retain protection from a tampering violation.

EPA agrees with commenters who note that annual certificate renewal confers little benefit when there are no changes to the manufacturer, conversion technology, or vehicles/engines to which the technology will be applied. However, EPA believes these concerns can be better addressed by clarifying that a certified conversion system does not lose its tampering exemption when the certificate expires, rather than by creating a new type of non-expiring certificate. Thus, the program EPA is finalizing provides compliance options for conversion manufacturers who wish to retain protection against a tampering violation but who do not wish to recertify. First, EPA has determined that an exemption from the CAA tampering prohibition secured through certification does not expire with the certificate, as long as the conditions under which the certificate was issued remain unchanged. If conditions change, the exemption would not remain valid and the manufacturer would need to re-certify or apply for the intermediate age or outside useful life programs, if applicable, to retain protection against a tampering violation. A change from small to large volume manufacturer status, for example, would necessitate a new demonstration and notification since large volume conversion manufacturers have different requirements than small volume conversion manufacturers. Second, manufacturers who obtained a clean alternative fuel conversion certificate under the previous subpart F regulations retain the tampering exemption conferred by certification, as long as conditions have not changed.[81] Third, EPA will consider the tampering exemption conferred by certification to remain with the test group/engine family as it gets older, extending protection through intermediate age and outside useful life status. This allows conversion manufacturers to continue to sell their products without renewing the certificate and paying further certification fees, again assuming no change to conditions under which the certificate was issued.[82] This means that conversion manufacturers only need to interact with EPA once as long as the conditions under which the certificate was issued remain unchanged.[83] Fourth, EPA will clarify with State, Federal, and other organizations offering alternative fuel incentives that EPA considers a certified conversion system to retain its tampering exemption, even after the certificate has expired.

5. In-Use Compliance

Clean alternative fuel conversion manufacturers are subject to in-use requirements. Many of these are described in Section III above, including warranty, defect reporting and recall requirements, as well as EPA's authority to perform in-use testing.

B. Intermediate Age Vehicle and Engine Clean Alternative Fuel Conversion Program

EPA is adopting an alternative to certification to satisfy the compliance demonstration and notification requirements for vehicles and engines that are no longer new but still fall within their useful life. The intermediate age vehicle and engine compliance program (intermediate age program) requires conversion manufacturers to demonstrate through testing that the converted vehicle or engine will continue to meet applicable standards through its useful life.

Alternatively, to qualify for an exemption from the tampering prohibition, manufacturers may opt to certify conversion systems for intermediate age vehicles and engines as if they were new vehicles and engines. *See* Section IV.A.

The establishment of an alternative to certification for intermediate age vehicle and engine conversion systems addresses EPA's interest in creating a streamlined compliance process that is appropriate for vehicles and engines that have been subject to real-world aging. EPA does not believe certification

[80] If a conversion manufacturer projects sales in the following calendar year, EPA will issue the certificate of conformity for the later model year, so that fees are paid based on sales that include the first full year of sales.

[81] This exemption is only permitted if all program requirements continue to be met and no new testing is required, such as new testing required for conversion manufacturers who change from small to large volume manufacturer status. The exemption from tampering is valid only if the conversion is installed on the OEM test groups/engine families and/or evaporative emissions/refueling families listed on the notification.

[82] The exemption from tampering conferred by certification continues even after the date of expiration on the certificate has passed causing it to expire.

[83] Alternatively, conversion manufacturers may choose to re-certify, as described above, or they may submit data and other notification requirements for inclusion in the intermediate age and outside useful life programs at any time concurrent with or subsequent to certification. This can occur even if the test group or engine family includes vehicles/engines that would otherwise not have reached the intermediate age threshold.

of intermediate age vehicles and engines is necessary because they are generally no longer representative of certification vehicles/engines. EPA originally developed the certification test procedures for new OEM vehicles and engines. Typical OEM vehicles delivered to EPA for confirmatory testing are recently manufactured pre-production models with about 4,000 miles of engine and emission control system stabilization mileage. No OEM vehicles with more than 10,000 miles are tested for certification.[84]

The program for intermediate age vehicles and engines maintains many of the existing certification test procedures, but departs from new and relatively-new vehicle or engine certification requirements in several notable areas. The demonstration of compliance with applicable standards employs the same procedures required of certified conversion manufacturers for exhaust and evaporative emissions testing.[85] However, the OBD demonstration requirement is different. Instead of conducting OBD demonstration testing as required for certification, conversion manufacturers may be able to meet the intermediate age OBD demonstration requirement by attesting that the OBD system is fully functional and by submitting an OBD scan tool report.[86] The notification process is also different for intermediate age vehicles and engines. Conversion manufacturers submit test data, attestations, and other required information to EPA using an electronic submission process. The application process is streamlined and conversion manufacturers participating in the intermediate age program are not required to pay certification fees. Conversion manufacturers participating in the intermediate age program will not receive a certificate of conformity. Rather, EPA will maintain a publicly available list identifying conversion systems that have satisfied the intermediate age demonstration and notification requirements.

1. Applicability

Vehicles and engines become eligible for the intermediate age compliance program when the date of their conversion is in a calendar year that is at least two years after the original model year of the vehicle or engine, *i.e.* when they are about two years old. For example, in calendar year 2011, model year 2009 and earlier vehicles and engines are eligible for the intermediate age program.

Manufacturers of conversion systems for vehicles and engines that are outside their full useful life may also use the intermediate age program as a demonstration sufficient to qualify for the clean alternative fuel conversion exemption from tampering. Conversion manufacturers that choose to participate in the intermediate age program must demonstrate compliance with the full useful life standards, even if the vehicle or engine has surpassed its useful life in age or mileage. Outside useful life converters who choose to seek exemption from tampering through the intermediate age program will not be required to generate or use deterioration factors.

2. Test Groups, Engine Families and Evaporative/Refueling Families

a. Test Groups for Light-Duty and Heavy-Duty Chassis Certified Vehicles

i. Small Volume Manufacturers and Small Volume Test Groups

Small volume conversion manufacturers and qualified small volume test groups of conversion systems for intermediate age vehicles are permitted some additional flexibility in creating test groups to which the conversion is applicable. The primary difference between test group criteria for the new and intermediate age programs is the elimination of the OBD group criterion under the intermediate age program. Vehicles can be placed into the same clean alternative fuel conversion test group using good engineering judgment if they satisfy the following:

(1) Same OEM and OEM model year[87]
(2) OBD still functional[88]
(3) Same vehicle classification (*e.g.,* light-duty vehicle, heavy-duty vehicle)
(4) Engine displacement (within 15% of largest displacement or 50 CID, whichever is larger)
(5) Same number of cylinders or combustion chambers
(6) Same arrangement of cylinders or combustion chambers (*e.g.,* in-line, v-shaped)
(7) Same combustion cycle (*e.g.,* two stroke, four stroke, Otto-cycle, diesel-cycle)
(8) Same engine type (*e.g.,* piston, rotary, turbine, air cooled versus water cooled)
(9) Same OEM fuel type (except otherwise similar gasoline and E85 flexible-fuel vehicles may be combined into dedicated alternative fuel vehicles)
(10) Same fuel metering system (*e.g.,* throttle body injection vs. port injection)
(11) Same catalyst construction (*e.g.,* beads or monolith, metal vs. ceramic substrate)
(12) All converted vehicles are subject to the most stringent emission standards used in certifying the OEM test groups within the conversion test group

ii. Large Volume Manufacturers

Large volume manufacturers may use the same test group combination flexibility as small volume manufacturers when designating intermediate age vehicle test groups. *See* Section IV.B.2.a.i for details. However, large volume manufacturers are required to conduct durability testing, as noted below.

iii. Dual-Fuel and Mixed-Fuel Vehicle Carry-Across

Dual-fuel and mixed-fuel vehicles which have different standards must create a separate submission to EPA for each OEM test group with different standards. Conversion test groups for dual-fuel and mixed-fuel vehicles cannot include vehicles subject to different OEM emission standards unless applicable exhaust and OBD demonstrations are also conducted for the original fuel(s) demonstrating compliance with the most stringent standard represented in the test group. However, as is described above in Section IV.A.2.a.i.a, test data from an EDV on the alternative fuel may be used to satisfy the demonstration requirement of multiple OEM test groups if the conversion test group criteria described above are otherwise met and the data demonstrate compliance with each standard.

b. Engine Families for Heavy-Duty Engines

i. Small Volume Manufacturers and Small Volume Engine Families

The same engine family combination criteria that are described in Section IV.A.2.b.i are permitted for clean alternative fuel conversion of intermediate age engines, except that

[84] This is due in part to fuel economy testing regulations which limit the accrued mileage for a fuel economy test vehicle to 10,000 miles. 40 CFR 600.007–08(b)(1).

[85] The technical amendments described in Section V and the scaling of assigned deterioration factors described in section IV.B.3.c.i are available for the intermediate age program.

[86] *See* Section IV.B.4 for more information about the required OBD attestations. *See* section IV.B.3.d for a description of the OBD scan tool procedure.

[87] Aftermarket fuel converters are currently permitted to use carry-over of test results from one model year to the next if the OEM exercised such flexibility in accordance with EPA regulations.

[88] Note that a functional OBD system means that it must function properly, must not be disabled, there are no MILS, no false MILs or false Diagnostic Trouble Codes, and all readiness flags must be set.

the same OBD grouping is not a criterion.

ii. Large Volume Manufacturers

Large volume manufacturers are permitted to use the same flexibility as small volume manufacturers when designating intermediate age heavy-duty engine families. *See* Section IV.B.2.b.i for details. However, large volume manufacturers are required to conduct durability testing.

iii. Dual-Fuel and Mixed-Fuel Engine Carry-Across

Data carry-across procedures for dual-fuel and mixed-fuel new engines described in Section IV.A.2.b.i.a are also applicable for dual-fuel and mixed-fuel intermediate age engines.

c. Evaporative/Refueling Families

The evaporative family criteria under the intermediate age program remain as provided in 40 CFR part 86. If the OEM evaporative system is no longer functionally necessary (*e.g.,* conversion to dedicated CNG or LPG), then conversion manufacturers may create new evaporative conversion groups following the criteria in 40 CFR 86.1821–01 for light-duty and heavy-duty chassis certified vehicles and 40 CFR 86.096–24(a)(12)–(13) for heavy-duty engines. Clean alternative fuel conversion evaporative/refueling families for dual-fueled or mixed-fuel vehicles/engines cannot include vehicles/engines that were originally certified to different evaporative emission standards. Conversion evaporative/refueling families for dual-fuel and mixed-fuel vehicles/engines cannot include vehicles/engines subject to different evaporative emission standards unless evaporative/refueling demonstrations are also conducted for the original fuel(s) demonstrating compliance with the most stringent standard represented in the evaporative/refueling family.

3. Demonstration Requirements

The demonstration requirements for clean alternative fuel conversions are based on the certification procedures, such as those specified in 40 CFR part 86, subparts A, B and/or S and 40 CFR part 1065 as applicable, subject to the exceptions and special provisions described in this section, Section III.F.1.a and Section V, if applicable.

a. Exhaust Emissions

The exhaust emissions demonstration is conducted on a test group (light-duty) or engine family (heavy-duty) basis. The worst-case EDV or EDE from each test group or engine family must be used to demonstrate compliance with the most stringent standards represented among the OEM vehicles or engines when they were originally certified. All exhaust demonstration requirements and test procedures which are required in regulations for OEM certification are required for fuel conversion compliance. Test procedures and other requirements are currently located in 40 CFR part 86 and 40 CFR part 1065.

b. Evaporative/Refueling Emissions

The test procedures to demonstrate that a vehicle or engine will meet evaporative standards during normal vehicle operation, including refueling, are currently specified in 40 CFR part 86 and part 1065. These test procedures and other requirements continue to apply for the intermediate age vehicle and engine fuel conversion program. Please *see* the technical amendments discussed in Section V for fuel-specific amendments which apply to conversions to CNG (or LNG) and LPG or hydrogen fuels.

c. Durability Demonstration and Assigned Deterioration Factors

i. Small Volume Manufacturers and Small Volume Test Groups/Engine Families

As noted in Section III.G.2 above, small volume manufacturers and eligible small volume test groups/engine families are permitted to use EPA assigned deterioration factors in lieu of exhaust and evaporative/refueling durability demonstrations. EPA is retaining this option for purposes of evaluating conversion systems that will be applied to intermediate age vehicles and engines. In addition, EPA is finalizing a new concept which is applicable to EDVs and EDEs with more than 10,000 miles. EPA will allow small volume manufacturers to use "scaled deterioration factors." Scaled deterioration factors are derived using current assigned deterioration factors to determine mileage applicable deterioration factors from 10,000 miles through intermediate useful life and from intermediate useful life through full useful life.[89] Although the actual rates of emissions deterioration from 10,000 miles to intermediate useful life and from intermediate useful life to full useful life may vary, EPA assumed a linear increase of emissions with increasing mileage in order to facilitate a simple scaling of the EPA assigned deterioration factors. In the future, EPA may issue guidance to adjust these scaled assigned deterioration factors if we find the rate of deterioration non-constant or the rate differs by fuel type. Mathematically, a constant rate of deterioration can be expressed as:

$$\frac{\Delta Mileage}{\Delta gpm} = Constant \qquad \text{(Eq. 1)}$$

Note: This does not mean that the deterioration factor increases linearly with mileage. The equation assumes that the grams of pollutant per mile increases at a constant rate as vehicle mileage increases.

In addition to this primary assumption, EPA will use these two definitions:

$$1)\ \underline{ADF(FUL)} = \frac{FULgpm}{INITgpm} \qquad \text{(Eq. 2)}$$

$$2)\ \underline{SDF(FUL)} = \frac{FULgpm}{MGgpm} \qquad \text{(Eq. 3)}$$

Where:

ADF(FUL) is the full useful life assigned multiplicative deterioration factor.

FULgpm is the grams per mile of pollutant projected at full useful life.

[89] Intermediate standards only apply to those vehicles originally certified with intermediate standards.

INITgpm is the grams per mile of pollutant measured at the beginning of the vehicle or engine's useful life.
SDF(FUL) is the scaled full useful life multiplicative deterioration factor.
MGgpm is the grams per mile of pollutant at the actual mileage of EDV or EDE.

Based on the assumption in equation 1:

$$\frac{FULMG - MG}{FULgpm - MGgpm} = \frac{FULMG - INITMG}{FULgpm - INITgpm}$$

Where:
FULMG is the appropriate full useful life mileage.
MG is the actual mileage of the EDV/EVE.
INITMG is the mileage at the beginning of the useful life. Note that this value is zero for heavy-duty vehicles, since evaluation is done at the zero-hour level.

From this expression, equations 2 and 3 can be used to ultimately arrive at:

$$SDF(FUL) = \frac{FULMG - INITMG}{FULMG - INITMG - (FULMG - MG)\left(1 - \frac{1}{ADF(FUL)}\right)} \quad \text{(Eq. 4)}$$

This equation shows how the scaled full useful life multiplicative deterioration factor can be calculated using the emissions data vehicle or engine mileage and the assigned full useful life multiplicative deterioration factor.

By carrying out the same processes, scaled intermediate useful life of deterioration factors, where applicable, can be determined by the expression:

$$SDF(MID) = \frac{MIDMG - INITMG}{MIDMG - INITMG - (MIDMG - MG)\left(1 - \frac{1}{ADF(MID)}\right)} \quad \text{(Eq. 5)}$$

Where:
SDF(MID) is the scaled intermediate useful life multiplicative deterioration factor.
MIDMG is the intermediate useful life mileage.
ADF(MID) is the intermediate useful life assigned multiplicative deterioration factor, where applicable.

In the same manner, additive scaled deterioration factors could also be derived. The resulting equation is:

$$ASDF = ODF\left(\frac{MG - INITMG}{FULMG - INITMG}\right) \quad \text{(Eq. 6)}$$

Where:
ODF is the OEM's original additive deterioration factor and ASDF is the additive scaled deterioration factor.

Only the full useful life scaled additive deterioration factor equation is presented here. However, the intermediate useful life scaled additive deterioration factor equation follows the same syntax except that the intermediate useful life additive deterioration factor is substituted in Equation 6 for ODF, and the intermediate age useful life is substituted for FULMG.

Equations 4, 5 and 6 are used to scale deterioration factors of vehicles with more than 10,000 miles used in the testing of clean alternative fuel conversions, for demonstration of compliance with exhaust and evaporative/refueling emissions standards. EPA may issue guidance to update or adjust these equations.

ii. Large Volume Manufacturers

a. Light-Duty and Heavy-Duty Chassis Certified Vehicles

Durability testing is required for large volume manufacturers of clean alternative fuel conversions of intermediate age vehicles. Durability groups for intermediate age vehicles shall be designated using the provisions set forth in 40 CFR 86.1820–01, except the durability grouping criteria for intermediate age vehicles need not include the precious metal composition and catalyst grouping statistic criteria, since they are not included in the test group criteria for clean alternative fuel conversions.

b. Heavy-Duty Engines

Durability testing is required for large volume manufacturers of clean alternative fuel conversions for intermediate age engines.

d. On-Board Diagnostics

EPA believes a properly functioning OBD system is essential to maintaining emissions compliance in aging vehicles and engines. However, EPA believes that the OBD demonstration for intermediate age vehicles and engines can be streamlined relative to the current certification requirements. In lieu of submitting OBD test data as is required for certification, manufacturers of intermediate age clean alternative fuel conversion systems may be able to submit an OBD scan tool report showing results of an OBD scan tool test procedure and attest that the OBD

system remains fully functional in the converted vehicle/engine. The attestation must state that the test group/engine family converted to an alternative fuel has fully functional OBD systems and therefore meets the OBD requirements such as those specified in 40 CFR part 86, subparts A and S when operating on the alternative fuel. This includes any new monitoring capability necessary to identify potential emission problems associated with the new fuel. Typical OBD monitors include but are not limited to: Fuel trim lean and rich, catalyst deterioration, engine misfire, oxygen sensor deterioration, EGR system (if applicable), and vapor leak (if applicable). Conversion manufacturers are not allowed to alias, remove, bypass, or turn off any applicable original OBD system monitor. Furthermore the MIL is required to continue to function properly and not illuminate unless system indicators or emission thresholds are truly being exceeded. EPA also requires readiness flags to be properly set for all monitors that identify any malfunction for all monitored components.

EPA requested comment as to whether the scan tool procedure proposed as "Option 3" for outside useful life vehicles/engines would also be appropriate for the intermediate age program. Comments stated that this demonstration would provide additional assurance that the OBD system remains fully functional. EPA agrees and is including use of this procedure in the OBD demonstration requirement for intermediate age vehicles. The procedure involves: using an OBD scan tool to clear all readiness codes (set codes to "not ready"); driving the vehicle/operating the engine until it triggers all codes to be set to ready; and then using an OBD scan tool to interrogate the OBD system.

Intermediate age converters may satisfy the OBD demonstration requirement either by completing the OBD demonstration described in new vehicle certification (Section IV.A.4) or by following the procedures described in the preceding paragraph.

EPA proposed using the procedures described in 40 CFR 85.2222 to satisfy the OBD demonstration requirements for the intermediate age conversions. These regulations establish a test procedure which checks the status of OBD readiness monitors, checks to determine if the OBD MIL is functional (bulb check), checks for commanded-on MIL illumination, and records all diagnostic trouble codes if the MIL is illuminated. However, these regulations reference Society of Automotive Engineers (SAE) OBD diagnostic mode assignments that are specific to light-duty vehicles and light-duty trucks. In order to be clear that the OBD scan tool procedure described above applies to all vehicles and engines that are required to comply with OBD regulations, we are adding the process described in 40 CFR 85.2222 to the new subpart F regulations, without the specific references to the light-duty vehicle OBD procedures. Any scan tool that displays the supported monitors, lists their corresponding readiness status, and reports all emission related pending and confirmed diagnostic trouble codes is considered acceptable.

An acceptable OBD demonstration under the intermediate age vehicle and engine program must include a printout of scan tool results following the fuel conversion showing that all supported monitors have been set to ready and there are no pending or confirmed diagnostic trouble codes. The vehicle/engine information number (VIN/EIN) must be provided with the scan tool report. Given the changes to the vehicle/engine resulting from the fuel conversion process, some monitors in the OEM OBD system may no longer be supported. For example, the evaporative emissions readiness monitor may need to remain unset for conversions in which the original evaporative emissions system is no longer functionally necessary.

EPA received comments that expressed concerns about the adequacy of a scan tool test. Although EPA believes the scan tool test will be sufficient in most cases, EPA may require OBD testing as described for certification in Section IV.A.3.d if the OBD scan tool report is not sufficient to demonstrate proper OBD operation.

4. Notification Process

Intermediate age clean alternative fuel conversion manufacturers must complete and submit EDV/EDE information, test data, compliance statements and all other appropriate information electronically. EPA intends to provide information about the notification process through its Web site and other information dissemination mechanisms.

The conversion manufacturer must enter information about the EDV or EDE, emission results from the exhaust and evaporative emissions testing, including any permissible carry-over data, applicable exhaust and evaporative emission standards and deterioration factors, and the OEM test groups or engine families and evaporative/refueling families for which the conversion system is intended. In this submission, the conversion manufacturers may use the appropriate exhaust and evaporative emissions scaled deterioration factors for vehicles and engines with greater than 10,000 miles as described in Section IV.B.3.c.i to demonstrate that the converted vehicle/engine meets the same standards to which the OEM vehicle or engine was certified. In addition, small volume conversion manufacturers and qualified small volume test groups/engine families using EPA assigned deterioration factors must present detailed information to confirm the durability of all relevant new and existing components and to explain why the conversion system will not harm the emission control system or degrade the emissions.

The conversion manufacturer must submit the scan tool demonstration data resulting from an interrogation of the OBD system as described in Section IV.B.3.d and submit the OBD statement of attestation as described in that section.

The intermediate age program notification requirements also include submission of any required compliance statements and other supporting documents such as an example label and packaging information, warranty provisions, and maintenance requirements. The specific set of necessary compliance statements will depend on the vehicle or engine category, the applicable standards, the alternative fuel type, and other factors.

The intermediate age vehicle and engine notification process will permit conversion manufacturers to submit statements of compliance or attestations instead of submitting test data for certain system features. Some of these compliance statements are found in the OEM certification regulations, such as in 40 CFR part 86, subparts A, B, and S and 40 CFR part 1065. In addition, the following statements specific to dual-fuel and mixed-fuel clean alternative fuel conversion may be permitted in lieu of test data, if appropriate:

1. "The test group/engine family converted to dual-fuel or mixed-fuel operation retains all the OEM fuel system, engine calibration, and emission control system functionality when operating on the fuel with which the vehicle/engine was originally certified."

2. "The test group/engine family converted to dual-fuel or mixed fuel operation retains all the functionality of the OEM OBD system (if so equipped) when operating on the fuel with which the vehicle/engine was originally certified."

3. "The test group/engine family converted to dual-fuel or mixed-fuel operation properly purges hydrocarbon

vapor from the evaporative emission canister when the vehicle/engine is operating on the alternative fuel."

EPA also proposed a statement of compliance that would have required the conversion manufacturer to attest that the test group/engine family converted to an alternative fuel uses fueling systems, evaporative emission control systems, and engine powertrain components that are compatible with the alternative fuel and designed with the principles of good engineering judgment. This attestation is still relevant, and is explicitly required for an outside useful life notification. However, the statement has been adjusted for the new and intermediate age programs to tie this requirement to a description and statement of attestation for the durability program. *See* Section IV.C.4.

This information must be submitted electronically in a format specified by the Administrator. If the test results meet both the intermediate and full useful life standards, after applying the deterioration factors (*see* Section IV.3.c.i), all supporting documents are included, and all compliance statements are attested, then the conversion manufacturer may submit the test data form to EPA.

EPA will periodically update its list of conversion systems that are appropriate for installation on intermediate age vehicle/engine test groups/engine families and evaporative/refueling families. The exemption from the tampering prohibition may be void *ab initio* if the conversion manufacturer fails to meet all of the requirements for the program. This is the case even if a submission has been made and the conversion system has been publicly posted.

a. Previously Certified Clean Alternative Fuel Conversion Systems

EPA will allow the tampering exemption conferred by certification to continue to apply to the test group/engine family as it reaches intermediate age and outside useful life status. The conversion manufacturer does not need to generate new data or reapply to the intermediate age or outside useful life programs to retain the exemption, as long as the conditions under which the certificate was issued remain unchanged. The exemption from tampering is valid only if the conversion is installed on the OEM test groups/engine families and/or evaporative emissions/refueling families listed on the certificate. EPA will make publicly available the list of certified conversion systems which may be used on intermediate age and outside useful life vehicles and engines.

5. In-Use Compliance

Clean alternative fuel conversion manufacturers are subject to in-use requirements. Many of these are described in Section III above, including warranty, defect reporting and recall requirements, as well as EPA's authority to perform in-use testing.

C. Outside Useful Life Vehicle and Engine Clean Alternative Fuel Conversion Program

As discussed in Section II, vehicle and engine emission standards established under the CAA apply not only at the time of production but also until the vehicle or engine reaches an age or usage threshold known as "full useful life." EPA regulations defining useful life are described in section II.B. Once a vehicle or engine has exceeded the useful life threshold there is no longer a statutory or regulatory obligation to comply with the applicable standard. However, the prohibition against tampering in section 203(a)(3) still applies to vehicles and engines outside their useful life. Thus, EPA is finalizing a program that enables converters of outside useful life vehicles and engines to qualify for an exemption from the tampering prohibition.

The absence of an applicable section 202 standard for vehicles and engines outside their useful life necessitates a different demonstration requirement than the demonstration of compliance with the applicable section 202 standard that we are finalizing for conversion of vehicles and engines still within their useful life. EPA considered and sought comment on several possible approaches to a demonstration that would help assure that outside useful life conversions are consistent with the CAA prohibition on tampering and do not cause environmental degradation. The approaches differed in the method by which manufacturers would demonstrate the emissions integrity of the conversion. EPA is adopting the approach described as "Option 3" in the proposal. This approach requires manufacturers to submit a technical description of the conversion that provides sufficient detail for EPA to evaluate emissions performance and durability. EPA may require that the technical description include emission test data if the description alone does not provide adequate assurance that the conversion system will not degrade emission control system performance or durability. Conversion manufacturers must also submit an OBD scan tool report. *See* Section IV.C.3 for a detailed explanation of the outside useful life demonstration requirement. A variation of this approach, described as "Option 1" in the proposal, would have required the technical description but not the OBD scan tool report. A different approach, Option 2 in the proposal, would have applied a testing requirement similar to the inside useful life demonstration requirement. Manufacturers would satisfy the Option 2 demonstration in one of two ways, either by submitting data to show that the converted configuration would meet inside useful life standards for the OEM vehicle/engine, or by submitting data to show that there was no deterioration in emissions before and after conversion.

EPA received comments in support of all the outside useful life options presented in the proposal. However, the comments favoring Option 2 did not provide data or other substantive evidence sufficient for EPA to conclude that the additional cost and burden associated with testing outside useful life vehicles/engines would be justified relative to the environmental impact of these conversions. EPA believes that the good engineering judgment demonstration requirement, which could include testing, in combination with the OBD scan tool report, will provide a sufficient basis for assessing the technical viability and emission control system integrity of conversion systems intended for older vehicles/engines. This demonstration must include sufficient evidence to show that the conversion system will maintain or improve upon emissions of the unconverted vehicle/engine, and to explain why emissions will not increase as a result of the conversion. *See* the Response to Comments document for further discussion of this issue.

The notification process for outside useful life vehicles/engines will be similar to the notification process for intermediate age conversion systems, as will the public listing of conversion systems that have satisfied EPA demonstration and notification requirements. Also, the exemption from the tampering prohibition may be void *ab initio* if the conversion manufacturer fails to meet all of the requirements for the program. This is the case even if a submission has been made and the conversion system has been publicly posted.

1. Applicability

Vehicles and engines are eligible for the outside useful life program once they have exceeded their useful life. As vehicle and engine technologies have advanced and changed, so have the regulatory definitions for useful life.

Please refer to Section II.B for current useful life references.

Manufacturers of conversion systems for outside useful life vehicles/engines may also qualify for exemption from the tampering prohibition through the intermediate age vehicle and engine compliance program. *See* Section IV.B.

EPA sought comment on whether to establish a subcategory of outside useful life vehicles and engines that reach the applicable mileage threshold for outside useful life status before they reach the applicable age threshold in years (*see* Section II.B for discussion of useful life). EPA received several comments opposing this subcategory approach on technical grounds. EPA has no data or other information to suggest that a different outside useful life definition should be applied for clean alternative fuel conversions than for other vehicle/engine emission standards. In addition, EPA believes that creating a separate subcategory of outside useful life vehicles may create unnecessary confusion and has therefore decided not to finalize a separate subcategory of outside useful life vehicles/engines.

2. Test Groups, Engine Families, and Evaporative/Refueling Families

EPA is finalizing the same requirements and criteria for test groups/engine families and evaporative/refueling family designations as for intermediate age vehicles and engines. *See* Section IV.B.2.

3. Demonstration Requirements

Manufacturers of conversion systems for outside useful life vehicles and engines may satisfy the demonstration requirement by submitting to EPA a detailed description of the conversion system. The submission must provide a level of technical detail sufficient for EPA to confirm the conversion system's ability to maintain or improve on emission levels in the intended vehicle or engine. The technical information should include, but is not limited to, a complete characterization of exhaust and evaporative emissions control strategies, and specifications related to OBD system functionality. EPA may audit the submission and may require the conversion manufacturer to supply additional information, including test data, to support the claim that the technology was developed using good engineering judgment and is being applied for purposes of conversion to a clean alternative fuel.

EPA would expect an outside useful life demonstration to include information such as data from before and after conversion FTP testing, component or part specifications, technical descriptions or diagrams, and any other information necessary for EPA to evaluate the technical viability of the conversion system and the use of good engineering judgment in its design. Some examples of good engineering judgment are provided below. This list is not comprehensive. It is not intended to exclude other approaches to the demonstration or to imply that a demonstration involving these features will be satisfactory in all cases:

Exhaust Control System: The original engine controller, sensors, actuators, catalysts and other emission control components are connected and functional, and actively monitored by the OBD system.

Evaporative Control System: The alternative fuel system is leak free and uses materials compatible with the alternative fuel. Dual-fuel and mixed-fuel vehicles/engines retain the components and the functionality of the OEM evaporative emission control system. For dual-fuel and mixed-fuel systems the evaporative emission control system purges the evaporative emission canister in a manner identical to the OEM designed purge system when the vehicle/engine is operating on the alternative fuel.

Fuel Delivery System: The alternative fuel delivery system employs technology that is at least equivalent in sophistication to the OEM fuel delivery system. For example, conversions of vehicles/engines with multiple port injectors employ alternative fuel systems with multiple port injectors; engines with throttle injection use alternative fuel systems with throttle injection; OEM carbureted vehicles/engines are able to use alternative fuel systems with central air mixers. Conversions of OEM vehicles/engines with closed loop feedback fuel control systems are expected to have similar closed loop control systems to maintain stoichiometric air/fuel control. Acceptable fuel control may also be achieved by using a secondary electronic control unit which adjusts fuel injector pulse width based on existing sensor inputs and on the alternative fuel's properties. Good engineering design precludes the use of driver actuated controls for engine starting or fuel adjustment, other than for selecting the fuel type for a dual-fuel vehicle/engine. EPA received comment from some conversion manufacturers concerned that their approach, while not equivalent in sophistication to the OEM technology, would still be sufficiently robust to meet applicable standards and/or prevent emissions deterioration. Certain aspects of good engineering judgment described in the exhaust control system, evaporative control system, and fuel delivery control system sections may be approached differently than described above, but EPA expects that test data demonstrating compliance is required rather than optional in such cases.

Durability: A discussion of the durability of the alternative fuel system is necessary to support a good engineering judgment determination. The conversion to a clean alternative fuel must not increase the deterioration rate of the exhaust or evaporative emission system components. Fueling system components whose material is known to prematurely deteriorate due to the alternative fuel's properties must be upgraded.

OBD: Good engineering judgment dictates that vehicles/engines equipped with OBD systems produce no false MILs or diagnostic trouble codes during normal operation, nor may there be any modifications that prevent OBD readiness flags from being properly set while operating on the alternative fuel. The OBD system must properly detect and identify malfunctions in all monitored emission related powertrain systems or components, including any new monitoring capability necessary to identify potential emission problems associated with the alternative fuel.

In addition to satisfying the good engineering judgment requirement, manufacturers of conversion systems for outside useful life vehicles/engines that were equipped with OBD systems in their OEM configuration must also submit a report containing OBD checks following conversion to the alternative fuel. This report must be based on the OBD information from the EDV/EDE that is selected to represent the outside useful life program test group or engine family. *See* Section IV.B.3.d for a further description of the OBD scan tool procedure and demonstration requirements.

Additional OBD emission test data, such as from the OBD testing procedures described in Section IV.A.3.d, may be required if the OBD scan tool report is not sufficient to demonstrate proper OBD operation.

4. Notification Process

Manufacturers of outside useful life conversion systems must use the same notification procedures to submit the required information as those for the intermediate age vehicle and engine compliance program (*see* Section IV.B). The notification submission must include documentation of the required demonstration as well as labeling

information and all appropriate attestation statements.[90]

EPA will periodically update its list of conversion systems that are appropriate for installation on outside useful life vehicle/engine test groups/engine families and evaporative/refueling families. The exemption from the tampering prohibition may be void *ab initio* if the conversion manufacturer fails to meet all of the requirements for the program. This is the case even if a submission has been made and the conversion system has been publicly posted.

5. In-Use Compliance

EPA may test vehicles and engines that have been converted under the outside useful life program to assess their performance in actual customer use. EPA may test such vehicles in their original and converted configurations, and revoke the tampering exemption for conversion systems that fail to demonstrate acceptable emissions performance.

V. Technical Amendments

EPA is finalizing several technical amendments to 40 CFR part 86, subpart S. Several of the amendments are applicable to the exhaust and evaporative emission testing requirements for vehicles using gaseous alternative fuels. The purpose of these amendments is to allow flexibility in determining compliance with EPA non-methane organic material (NMOG) standards for vehicles, and also to allow statements of compliance in lieu of test data for meeting exhaust emission standards for formaldehyde (HCHO), and evaporative emissions. For purposes of this regulation, compressed natural gas (CNG) or liquefied natural gas (LNG), liquefied petroleum gas (LPG), or hydrogen fuels are eligible for the technical amendments described below.

Other technical amendments provide clarity and consistency to regulatory references for clean alternative fuel conversion and technical corrections and clarifications for the light-duty greenhouse gas clean alternative fuel conversion procedures.

A. Exhaust Emission Technical Amendments

1. NMHC Multiplicative Adjustment Factor

Prior to this rulemaking, 40 CFR 86.1810–01(p) allowed manufacturers of gasoline- and diesel-fueled vehicles to use a multiplicative adjustment factor to convert non-methane hydrocarbon (NMHC) exhaust emissions to an equivalent NMOG result to demonstrate compliance with NMOG standards. EPA is expanding the provision in 40 CFR 86.1810–01(p) to also allow manufacturers of CNG, LNG, LPG, and hydrogen-fueled vehicles to demonstrate compliance through use of a multiplicative adjustment factor. Manufacturers may optionally determine compliance with NMOG standards by measuring NMHC and then applying a manufacturer-provided multiplicative adjustment factor to convert the NMHC results to an equivalent NMOG value. The multiplicative adjustment factors must be based on fuel specific data and must be approved in advance by EPA.

2. HCHO Compliance Statement

Prior to this rulemaking, 40 CFR 86.1829–01(b)(1)(iii)(E) and (F) allowed vehicle manufacturers to submit a statement of compliance in lieu of submitting HCHO test data to demonstrate compliance with HCHO exhaust standards for vehicles tested with gasoline or diesel. EPA is finalizing the same flexibility for vehicles operating on CNG, LNG, LPG, or hydrogen.

B. Evaporative Emissions Technical Amendments

1. Evaporative Emissions, Running Loss, Refueling Loss Compliance Statement

EPA is finalizing a technical amendment to 40 CFR 86.1829–01(b)(2)(i) to allow waiver of evaporative emissions reporting requirements, including running loss and refueling loss, and to allow compliance with the requirements in 40 CFR 86.1811–04(e) for CNG, LNG, LPG, or hydrogen fuels by making a compliance statement in the application for certification. 40 CFR 86.1829–01(b)(2)(i) previously allowed a compliance statement for CNG-, LNG,- or LPG-fueled vehicles in lieu of submitting data to demonstrate compliance with evaporative emission standards in 40 CFR 86.1811–04(e). This amendment simply clarifies that manufacturers using hydrogen fuels, for example blends of hydrogen and methane, may use an evaporative emissions statement of compliance. Compliance statements do not alleviate the OEM or aftermarket fuel converter from complying with evaporative emissions, running loss and refueling standards in 86.1811–04(e). Compliance statements are expected to be supported by development testing data or other engineering data.

The rationale for allowing compliance statements in lieu of test data for evaporative emissions, running loss, and refueling emissions requirements is based on the expectation that fueling systems for gaseous-fueled vehicles will have a closed-system design with zero evaporative emissions. For LPG-fueled vehicles, a refueling statement of compliance is only allowed for systems in which the LPG fuel tank has no open vent (sometimes referred to as an "outage" valve) during the refueling operation.

The flexibilities described above for evaporative emissions are consistent with the original subpart F rulemaking.[91] Adding these technical amendments to section 86.1829–01(b)(2)(i) will provide clarity to EPA regulations for OEM manufacturers and clean alternative fuel conversion manufacturers desiring to certify vehicles on gaseous fuels.

C. Additional Technical Amendments

There are several regulatory terms and references in 40 CFR part 86 that link to the previous subpart F regulations. These are being updated to the appropriate terms and references for the new subpart F regulations. In addition, this rule is clarifying other 40 CFR part 86 statements referencing clean alternative fuel conversion to ensure that the references are consistent with the clean alternative fuel conversion program.

Specifically, EPA is removing and revising language found in 40 CFR 86.1818–12, 40 CFR 86.1864–10 and 86.1865–12 that could be read to imply that clean alternative fuel conversions are subject to OEM fleet average standards. These provisions are being revised to eliminate potential confusion about applicability of fleet average standards to conversions. Fleet average standards are not generally appropriate for clean alternative fuel conversion manufacturers because the "fleet" of vehicles/engines to which a conversion system may be applied has already been accounted for under the OEM's fleet average standard. The OEM fleet average is derived from the production- or sales-weighted average of individual test group/engine family certification levels

[90] The attestation statements to be reviewed and signed for the outside useful life program are identical to the attestation statements required for the intermediate age vehicle and engine compliance program (*See* Section IV.B.4) with one addition. The outside useful life program requires that the conversion manufacturer attest to the following statement: "The test group/engine family converted to an alternative fuel uses fueling systems, evaporative emission control systems, and engine powertrain components that are compatible with the alternative fuel and designed with the principles of good engineering judgment."

[91] 59 FR 48472 (September 21, 1994).

in a given model year. Under the clean alternative fuel conversion program, conversion manufacturers will comply with the certification standard applicable to OEM vehicles or engines, if the vehicle/engine is within its useful life, or will demonstrate that emissions are not degraded after conversion, if the converted vehicle/engine is outside useful life. Accordingly, clean alternative fuel conversions will be consistent with the applicable OEM standard and will not affect the OEM fleet average standard. Therefore it is not necessary to require compliance with an additional clean alternative fuel conversion fleet average standard.

D. Light-Duty Vehicle Greenhouse Gas Compliance for Clean Alternative Fuel Conversion

EPA's greenhouse gas regulations require that all alternative fuel conversion manufacturers comply with greenhouse gas standards for light-duty vehicles and light-duty trucks beginning in model year 2012 (unless exempted under the provisions of 40 CFR 86.1801–12).[92] EPA is clarifying how alternative fuel conversion manufacturers demonstrate compliance with the applicable greenhouse gas emission standards.

OEMs are subject to two types of light-duty greenhouse gas standards: a fleet-average standard and an in-use standard for the full useful life of the vehicle.[93] The light-duty greenhouse gas regulations require that test groups remain the OEM basis for certification, however carbon-related exhaust emissions (CREE) are reported to EPA by OEMs at the model type and subconfiguration levels (smaller units than test groups), and production-weighting of those values determines compliance with the fleet average standard. Consistent with current EPA policy under the Tier 2 program, the conversion manufacturer is not subject to the fleet average standard, but each converted vehicle must meet the vehicle-specific standards that the original OEM vehicle was certified to meet. This ensures that the in-use fleet of vehicles will sustain the OEM fleet average levels, or even improve upon overall fleet emission levels.

To demonstrate clean alternative fuel conversion compliance with light-duty greenhouse gas standards, EPA considered asking the conversion manufacturers to submit test data for every subconfiguration within a test group to demonstrate that the fuel converted vehicle meets the applicable greenhouse gas emission standards. However, testing at this granularity (as is currently done for fuel economy labeling and the CAFE program) would be especially burdensome for an industry that is not subject to fuel economy labeling and to which the CAFE program does not apply. Instead, EPA believes it is reasonable to require emissions data on the typical light-duty vehicle compliance basis, the test group. However, any subconfiguration within the test group—if selected for testing by EPA—must meet the applicable N_2O, CH_4, and CO_2 subconfiguration standards that apply to the OEM vehicles as set forth in 40 CFR 86.1818–12(d) and 40 CFR 86.1818–12(f).[94] The CREE standard contains a 10% adjustment factor applied to the initial OEM test results to account for test-to-test variability and OEM production margin.[95]

The clean alternative conversion manufacturer must submit CREE, N_2O and CH_4 data from the same EDV that is used to support criteria pollutant testing and standards, and the results must demonstrate that the converted vehicle meets the OEM N_2O and CH_4 standards set forth in 40 CFR 86.1818–12(f) and the OEM subconfiguration CO_2 standard set forth in 40 CFR 86.1818–12(d) [96] for the OEM subconfiguration that matches the conversion EDV. In addition, EPA may test or request the conversion manufacturer to test other sub-configurations within the conversion test group, and those results must also demonstrate compliance with the appropriate sub-configuration standard in 40 CFR 86.1818–12(d).

40 CFR 86.1818–12(f)(2) sets forth an alternative to meeting the N_2O and CH_4 exhaust emission standards in 40 CFR 86.1818–12(f)(1). However, 40 CFR 86.1818–12(f)(2) is not available to fuel conversion manufacturers, since there is no greenhouse gas fleet average standard for fuel converted vehicles. Therefore, EPA is adding a third option, specific to fuel conversion manufacturers, that allows the same process set forth in 40 CFR 86.1818–12(f)(2) but is adapted for the unique situation of clean alternative fuel conversion manufacturers. This alternative requires that the fuel conversion manufacturer determine a CREE value (including N_2O and CH_4) specific to the fuel conversion EDV, even if the OEM did not use N_2O and CH_4 in the CREE calculation. This value must meet the sub-configuration-specific in-use CO_2 exhaust emission standard, set forth in 40 CFR 86.1818–12(d) and determined by the OEM.

VI. Environmental Effects

As in the original subpart F rulemaking,[97] the primary purpose of this revised rulemaking is to maintain emissions performance and air quality while removing a potential barrier to the commercial production of clean alternative fuel conversion systems. The Agency has not attempted to quantify the environmental effects of this regulation because the goal of this rulemaking is to preserve environmental benefits from existing EPA vehicle and engine standards by creating a clear, legal pathway for clean alternative fuel conversion while maintaining existing emissions control levels. Therefore the Agency's best assessment of environmental impacts due to this rulemaking is that the environmental effects are at worst, neutral.

VII. Associated Costs for Light-Duty and Heavy-Duty Chassis Certified Vehicles

The cost associated with achieving a regulatory exemption from tampering for clean alternative fuel conversions under this amended regulation is expected to be less than the previous cost of compliance. The amount of cost reduction will vary based on conversion technology, fuel type, vehicle age, applicability, conversion manufacturer preference, and the conversion manufacturer's annual sales volume. The baseline cost estimates are summarized in Section VII.A below and are based on the regulatory program in place before this amended regulation. Additionally, there are two vehicle-age dependent cost estimates summarized in Section VII.B and VII.C for certified conversions (VII.B) and intermediate age vehicle conversions (VII.C).

The baseline and projected costs will also depend on the original vehicle fuel and on the specific fuel to which the vehicle is being converted. This cost analysis is intended to apply to conversions to any fuel. Some test procedures are not required for either dedicated CNG or LPG or dual-fuel gasoline/CNG or dual-fuel gasoline/LPG. Since more than 98% of the alternative fuel conversion certificates issued by EPA in recent years were for these types of conversions, EPA conversion requirements or testing exemptions

[92] *See* preamble discussion at 75 FR 25484 (May 7, 2010) and regulations at 40 CFR 86.1801–12(b).

[93] 75 FR 25472 (May 7, 2010).

[94] 75 FR 25474 (May 7, 2010). If the OEM complied using the light-duty greenhouse gas fleet averaging option for nitrous oxide (N_2O) and methane (CH_4), as allowed under 40 CFR 86.1818–12(f)(2), the calculations of the carbon-related exhaust emissions require the input of grams/mile values for N_2O and CH_4.

[95] 75 FR 25473 (May 7, 2010).

[96] *See* footnote 94.

[97] 59 FR 48472 (September 21, 1994).

which are specific to CNG and LPG are noted in a separate section. However, any description in this section which is not specified as applying to CNG or LPG specifically should be assumed to apply to all conversion fuels.

The baseline and projected costs also depend upon the conversion manufacturer's annual sales volume. Since almost all current conversion manufacturers have sales volumes low enough to be eligible to use Small Volume Manufacturer certification procedures, this cost analysis only describes baseline and projected costs for small volume conversion manufacturers.[98] If sales volumes were to increase such that manufacturer(s) surpassed small volume thresholds, EPA expects costs for large volume manufacturer fuel conversion compliance to remain unchanged or to decrease from the baseline costs for large volume manufacturer fuel conversion compliance.

This cost estimate does not consider expenses converters may incur to develop and design their conversion system. Typical product development costs include research, expert consultation, preliminary or shakedown testing, and other expenses associated with perfecting system functionality. Rather, this analysis estimates the expected cost of satisfying the EPA testing and/or demonstration requirement. The estimate includes the cost of creating a certification application, submitting test data to EPA, confirmatory testing, and certification fees. Costs associated with confirmatory testing requirements include preparing a vehicle and shipping it to the EPA laboratory for testing. All hourly wage data for conversion manufacturer labor is based on the Bureau of Labor and Statistics.

All conversion manufacturers reported that a senior manager is conducting testing oversight and application preparation, so this estimate applies the same labor rate for conversion manufacturer labor across tasks. Engineering managers are reported to earn an average of $57.97 per hour according to a May 2008 report by the Bureau of Labor and Statistics.[99] EPA has applied a suggested 100% labor overhead cost to all conversion manufacturer labor costs. In addition, EPA typically applies a 6.5% general and administrative overhead cost to all costs. Technology research and development costs were not considered in this analysis because these costs are not expected to change as a result of this rulemaking.

Conversion manufacturers generally try to apply one set of test data to as many vehicle makes and models as EPA will allow to minimize testing costs. Because costs can be scaled when certifying multiple test groups and/or multiple evaporative/refueling families, and conversion manufacturers each have different testing and compliance strategies and different target market plans, this analysis will derive the baseline costs for converting vehicles based on the assumption that costs can be scaled when certifying multiple test groups and/or multiple evaporative/refueling families. The scaling factors were determined by the following applicable ratios: (1) Number of OEM exhaust test groups to number of OEM certificates and (2) number of OEM evaporative/refueling families to number of OEM certificates. This allowed EPA to create a scaled unit cost for each certificate which adequately represents that manufacturers apply test data to multiple certificates. To create a real-world example, and allow a clear comparison of baseline versus projected costs of the revised programs, this cost analysis ultimately compares the cost of fuel conversion for four OEM certificates after applying all appropriately scaled unit costs. This same logic was then used to derive the approximate cost of compliance for the vehicle fuel conversion of four OEM certificates under the amended regulations, as described previously in this preamble.

A. Baseline Costs

Baseline costs are derived by first determining the cost of one certificate without any scaled costs. These costs would be applicable if a conversion manufacturer chose to convert vehicles represented by only one OEM certificate. This is rarely done in practice because conversion manufacturers choose to take advantage of using one set of test data to apply to multiple certificates.

Next the baseline cost of one certificate is calculated assuming the conversion manufacturer chooses to take advantage of the application of data to multiple certificates. Average scaled costs are calculated on a unit basis of one certificate with scaled costs.

Lastly, EPA calculated the baseline cost of converting vehicles represented by four OEM certificates. This is done to create a real-world example which allows a clear comparison for the cost reductions created under the revised regulatory program.

1. Costs of One Certificate Without Scaling Costs

During development of this regulation, EPA contacted several aftermarket conversion manufacturers and an independent test laboratory to estimate the aftermarket fuel conversion certification costs under 40 CFR part 85, subpart F. The basic certification testing requirements included: (a) Demonstration of compliance with exhaust emissions on a test group basis: One FTP75 test and CO, NO_X, and NMHC analysis; HCHO and NMOG speciation; one HFET NO_X test; (b) Demonstration of compliance with evaporative/refueling emissions on an evaporative/refueling family basis: Hot soak, canister purge and 2 or 3 day evaporative emissions tests; and (c) Compliance with the Federal OBDII demonstration tests which is generally done at the Federal level on the same basis as the exhaust test group. Lodging, labor and general and administrative costs are appropriated to each requirement category in order to provide a clear examination of costs under the new programs.

a. Costs Associated With Exhaust Emission Testing (Test Group Basis)

All estimated independent test laboratory costs associated with exhaust emissions testing are listed in Table VII.A–1 and Table VII.A–2 below.

TABLE VII.A–1—EXHAUST EMISSIONS TESTING COSTS TYPICALLY INCURRED AT INDEPENDENT TEST LABORATORY

	Average costs
Coast Down Coefficient Determination	$360.00
One FTP75 Test and CO, NO_X, NMHC Analysis	1,116.67
(NMOG Speciation)—Aldehydes and Ketones	1,500.00
(NMOG Speciation)—Alcohols	250.00

[98] 40 CFR 86.1838–01.

[99] For electronic access to the Bureau of Labor and Statistics Data, *see http://www.bls.gov/oes/2008/may/oes_nat.htm#b11-;0000.*

TABLE VII.A–1—EXHAUST EMISSIONS TESTING COSTS TYPICALLY INCURRED AT INDEPENDENT TEST LABORATORY—Continued

	Average costs
One HFET NO_X Test	430.00
Exhaust Independent Test Lab Billable Labor Costs	702.50
Total Exhaust Independent Test Lab Costs	4,359.17

TABLE VII.A–2—TOTAL ESTIMATED EXHAUST EMISSIONS TESTING COSTS FOR FUEL CONVERSION OF ONE OEM CERTIFICATE (NO SCALING APPLIED)

	Testing costs for one aftermarket fuel conversion certificate (no scaling for multiple certificates applied)
Total exhaust independent test lab costs	$4,359.17
Total exhaust testing oversight labor costs (including 100% labor overhead)	1236.69
Lodging	280.00
Subtotal	5,875.86
6.5% G & A	381.93
Total Cost for Exhaust Tests	6,257.79

b. Costs Associated With Evaporative/Refueling Emission Testing (Evaporative/Refueling Family Basis)

TABLE VII.A–3—TOTAL ESTIMATED EVAPORATIVE EMISSIONS TESTING COSTS FOR FUEL CONVERSION OF ONE OEM CERTIFICATE (NO SCALING APPLIED)

Total evap independent test lab costs	$5,980.00
Total evap testing oversight labor costs (including 100% labor overhead)	.....
Lodging	.....
Subtotal	5,980.00
6.5% G & A	388.70
Total Cost for Evap Tests	6,368.70

c. Costs Associated With OBDII Demonstration Testing (Test Group Basis)

TABLE VII.A–4—TOTAL ESTIMATED OBD DEMONSTRATION TESTING COSTS FOR FUEL CONVERSION OF ONE OEM CERTIFICATE (NO SCALING APPLIED)

Total OBD independent test lab costs	$16,325.00
Total OBD testing oversight labor costs (including 100% labor overhead)	7,265.57
Lodging	1,120.00
Subtotal	24,710.57
6.5% G & A	1,606.19
Total Cost for OBD Demo Tests	26,316.76

d. Other Certification Costs

TABLE VII.A–5—OTHER CERTIFICATION ESTIMATED COSTS FOR FUEL CONVERSION OF ONE OEM CERTIFICATE (NO SCALING APPLIED)

Travel to oversee testing at independent test lab	$1,000.00
Shipment of vehicle to independent test lab	4,000.00

TABLE VII.A–5—OTHER CERTIFICATION ESTIMATED COSTS FOR FUEL CONVERSION OF ONE OEM CERTIFICATE (NO SCALING APPLIED)—Continued

Prep and shipment of vehicle to EPA for confirmatory tests	6,200.00
Preparation of Application for certification labor costs (including 100% labor overhead)	4,637.60
Subtotal	15,837.60
6.5% G & A	1,029.44
Total Costs for Travel, Vehicle Shipments, and Application Preparation	16,867.04

e. Certification Fees

The certification fee for a light-duty vehicle certificate issued in 2010 was $34,849.[100] However, there is a reduced fee program which allows most conversion manufacturers to pay far less. The reduced fee is calculated based on sales volume and value added.[101] The formula can be described as 1% * number of units * retail value added. Because most conversion manufacturers sell less than 50 vehicle conversions per test group and conversion kits vary greatly in price, for purposes of this estimate, EPA is using 50 units and a retail value of $8,000. Therefore, for this cost estimate the baseline certification fees are estimated at $4,000.

The baseline cost of compliance for one certificate, including all testing, associated labor, overhead, and general and administrative costs if costs are not scaled due to test group, OBD, or evaporative/refueling family combinations is about $59,810

2. Cost of One Certificate When Testing Costs Are Scaled for Multiple Certificate Groups

OEM test groups, evaporative/refueling families, and Federal OBD approvals are combined to form a unique certificate. These same test groups and evaporative/refueling families, when taken separately, can often apply to multiple certificates. Here, EPA examined 418 model year 2007 light-duty certificates to determine appropriate scaling factors for exhaust test groups, evaporative/refueling families, and OBD demonstrations tests. EPA reviewed model year 2007 data because these data were complete, readily available, and deemed to be representative. Of the 418 certificates, there were 335 unique test groups each with exhaust emission data, meaning the OEMs used 335 sets of exhaust test data to apply for 418 certificates. The ratio represented here (335/418 = 0.8) provides an approximate scaling factor which can be applied to the cost of one set of exhaust emissions data to determine the average unit cost per certificate for exhaust emission testing. Of those same 418 certificates, there were only 189 evaporative/refueling families, therefore the average scaling factor for evaporative/refueling family testing costs (189/418 = 0.45) times the cost for one set of evaporative emissions testing represents the average unit cost per certificate for evaporative/refueling emissions testing. For the purposes of this cost estimate we assumed that all Federal OBD approvals for conversion manufacturers were done in parallel with exhaust test group testing and therefore applied the same scaling factor to OBD testing costs as determined for exhaust emissions testing.

TABLE VII.A–6—COST OF ONE CERTIFICATE WHEN TESTING COSTS ARE SCALED FOR MULTIPLE CERTIFICATE GROUPS

	Testing costs for one aftermarket fuel conversion certificate (no scaling for multiple certificates applied)	Scaling factor	Scaled testing costs for conversion of one OEM certificate
Total Cost for Exhaust Tests	$6,257.79	0.80	$5,015.22
Total Cost for Evap Tests	6,368.70	0.45	2,879.63
Total Cost for OBD Demo Tests	26,316.76	0.80	21,091.18
Total Costs for Travel, Vehicle Shipments, and Application Preparation.	16,867.04	Weighted appropriately to each task	11,385.68
Certification Fees	4,000.00	1	4,000.00
Total Cost for OEM Test Group of Vehicles	59,810.30		44,371.70

Thus, the baseline cost of compliance for one certificate, including all testing, associated labor, and overhead and general and administrative costs if costs are scaled is about $44,372.

3. Baseline Cost Analysis Based on Four OEM Certificates

EPA estimated the baseline cost of conversion of four certificate groups of vehicles after applying appropriately scaled testing costs, including all testing, confirmatory testing, associated labor, overhead, and general and administrative costs to be about $177,487.

B. Certified Conversion Costs Under the Revised Regulation

Under this revised regulation the projected cost for a certified conversion will be similar to the previously applicable fuel conversion certification process, with three exceptions: (1) A statement of compliance using good engineering judgment will be accepted in lieu of HCHO testing analysis for

[100] For an electronic version of the current fee filing form, *see http://www.epa.gov/otaq/cert/documents/on-hwy2010feeform-01-07-10.pdf.*

[101] 40 CFR 1027.120.

certain alternative fuels, and the use of conversion factors to calculate NMOG from NMHC will be accepted in lieu of speciation testing for some alternative fuels; (2) statements of compliance are accepted for sealed gaseous fuel systems in lieu of evaporative emissions test data; and (3) test group combinations will allow one set of test data to apply to a broader range of vehicles. These changes all reduce costs associated with compliance testing.

1. HCHO and NMOG Cost Reductions for CNG (or LNG), LPG, and Hydrogen

In lieu of testing, EPA will accept a statement of compliance for HCHO emissions for conversions to CNG (or LNG), LPG, or hydrogen fuels. In addition, conversions to CNG (or LNG), LPG, or hydrogen need only submit engineering data and analysis supportive of the usage of a conversion factor from NMHC to NMOG, in lieu of speciation testing. Testing for HCHO is generally done in conjunction with NMOG speciation, and the average cost for both tests is $1,750 per test group, which would be scaled to an average of $1,400 per certificate. Under this revised regulation, testing cost for HCHO and NMOG analysis for conversions to CNG (or LNG), LPG, or hydrogen would be $0.

2. Evaporative Emissions Cost Reductions for Gaseous Fuels

The average cost for evaporative emissions hot soak, and diurnal SHED testing, including labor costs is $6,369. After scaling the average is $2,879 per certificate. The revisions to 40 CFR 86.1811–04 allow a manufacturer statement of compliance for evaporative testing for gaseous fuels. This eliminates all evaporative emissions testing costs for gaseous fuels such as CNG (or LNG), LPG, or hydrogen fuels.

3. Test Group Combination Cost Reductions for All Conversions to Clean Alternative Fuel

This revised regulation defines criteria which may allow the combination of several OEM test groups into a single clean alternative fuel conversion test group. Cost savings associated with combining test groups will be significant, depending upon the exact number of OEM test groups combined. For example: If two OEM test groups are combined, the testing costs for exhaust emission testing are halved; if three test groups are combined, these testing costs are about one-third.

The quantity of OEM test groups which can be combined into a single clean alternative fuel conversion test group will vary depending on the available OEM vehicle individual certification compliance strategies. EPA examined the 2007 light-duty OEM test group data and has conservatively estimated that on average conversion manufacturers will be permitted to combine about 25% of the OEM exhaust test groups. Therefore, the cost reduction estimate for our comparative grouping, four test groups, would conservatively result in a 25% cost reduction in exhaust emissions and OBD testing which can be applied to the scaling factors for comparison simplicity.

4. Total Cost Reductions for Certification Under the Amended Regulation

TABLE VII.B–1—ESTIMATED COST FOR NEW VEHICLE CONVERSION FOR ONE CERTIFICATE WHEN TESTING COSTS ARE SCALED FOR MULTIPLE CERTIFICATE GROUPS

	Testing costs for one aftermarket fuel conversion certificate (no scaling for multiple certificates applied)	Scaling factor	Scaled testing costs for conversion of one OEM certificate	Scaled testing costs for conversion of four OEM certificates
Total Cost for Exhaust Tests	$6,257.79	0.60	$3,761.41	$15,045.65
Total Cost for Evap Tests	6,368.70	0.45	2,879.63	11,518.51
Total Cost for OBD Demo Tests	26,316.76	0.60	15,790.06	63,160.23
Total Costs for Travel, Vehicle Shipments, and Application Preparation.	16,867.04	Weighted appropriately to each task.	10,313.03	41,252.14
Certification Fees	4,000.00	1	4,000.00	16,000.00
Total Cost for OEM Test Group(s) of Vehicles.	59,810.30		36,744.13	146,976.52

The total cost for the certification of the conversion of four OEM certificates to any clean alternative fuel under the final rule is $146,977. This represents an estimated cost reduction of more than $30,000 compared to previous fuel conversion certification testing costs for conversion of four OEM certificates. If the conversion certification is for conversions to CNG (or LNG), LPG, or hydrogen fuels, the costs may be further reduced due to the technical amendments described above.

C. Intermediate Age Vehicle Compliance Costs

The previous fuel conversion compliance process required certification. Therefore the baseline costs presented in Section VI.A also apply to intermediate age vehicles.

1. HCHO and NMOG Cost Reductions for CNG, LPG, and Hydrogen

In lieu of testing, this revised regulation permits a statement of compliance for HCHO emissions for conversions to CNG (or LNG), LPG and hydrogen. In addition, conversions to CNG (or LNG), LPG, or hydrogen need only submit engineering data and analysis supportive of the usage of a conversion factor from NMHC to NMOG, in lieu of speciation testing. Testing for HCHO is generally done in conjunction with NMOG speciation, and the average cost for both tests is $1,750 per test group, which would be scaled to an average of $1,400 per certificate. Under this new rule, testing cost for HCHO and NMOG analysis for conversions to CNG (or LNG), and LPG is $0.

2. Evaporative Emissions Cost Reductions for Gaseous Fuels

The average cost for evaporative emissions hot soak, and diurnal SHED testing, including labor costs is $6,369. After scaling the average is $2,879 per certificate. The amendment to 40 CFR 86.1811–04 allows a manufacturer statement of compliance for evaporative testing for gaseous fuels. This will eliminate evaporative emissions compliance testing costs for gaseous fuels.

3. Conversion Test Groups Cost Reduction

Under this revised regulation, intermediate age conversion test groups share the same grouping criteria as the conversion test groups for new vehicles, except the intermediate age conversion test groups do not require the same OEM OBD grouping. This provision is likely to result in a further reduction in testing costs due to further scaling. However, the scaling appropriate due to these combinations is variable from year to year and from OEM manufacturer to OEM manufacturer. Therefore, for the purposes of this cost estimate, we will assume that the exhaust conversion test group costs for intermediate age vehicles are the same as the test group costs for certification of new vehicles under this regulation.

4. OBD Demonstration Testing Cost Reduction

The OBD demonstration requirement for intermediate age vehicles is different than the new vehicle OBD demonstration requirement. Intermediate age conversions do not necessarily require the OBD demonstration tests that are required for certification. Instead the intermediate age conversion manufacturer must attest that the OBD system works properly and submit an OBD scan tool report. The conversion manufacturer must still conduct any development and bear associated costs necessary to ensure that the post-conversion OBD system remains functional and meets the EPA standards, but the costs associated with conducting certification OBD demonstration testing for data submission to EPA may not be required for the intermediate age vehicle program. Since a scan tool is a one-time cost of around $300–$400 and we estimate labor at less than two hours, EPA estimated the scan tool testing costs at about $287 per scan tool test.[102] The intermediate age cost reduction from the OBD certification demonstration testing cost baseline could result in a cost savings up to $26,000 per conversion test group.

5. Total Cost Reductions for Intermediate Age Vehicles Under the Revised Regulation

TABLE VII.C–1—REVISED REGULATION COST FOR INTERMEDIATE AGE VEHICLE CONVERSION WHEN TESTING COSTS ARE SCALED FOR MULTIPLE CONVERSION TEST GROUPS

	Testing costs for one aftermarket fuel conversion compliance unit (no scaling for multiple OEM certificates applied)	Scaling factor	Scaled testing costs for conversion of one OEM certificate	Scaled testing costs for conversion of four OEM certificates
Total Cost for Exhaust Tests	$6,257.79	0.60	$3,761.41	$15,045.65
Total Cost for Evap Tests	6,368.70	0.45	2,879.63	11,518.51
Total Cost for OBD Scan Tool Demo Tests	286.95	0.60	172.17	688.69
Total Costs for Travel, Vehicle Shipments, and Data Submission.	12,915.81	Weighted appropriately to each task.	6,361.80	25,447.20
Total Cost for per Conversion of OEM Test Group(s) of Vehicles.	25,829.25		13,175.01	52,700.04

The total cost for the intermediate age compliance program for the conversion of vehicles represented by four OEM certificates to any clean alternative fuel under the amended rule is estimated to be $52,700. This represents an estimated cost reduction of more than $100,000 from the baseline cost of compliance for conversion of vehicles represented by four OEM certificates. If the conversion certification is for conversions to CNG, LPG or hydrogen, the costs may be further reduced due to the NMHC/NMOG technical amendment described under Section V.1.B.

D. Outside Useful Life Vehicle Compliance Costs

EPA examined the potential costs for the three outside useful life demonstration options [103] presented in the proposal for comment. We estimated that the cost for the outside useful life program could vary significantly based on the finalized option and the technology employed by the converter. As described above for the new and intermediate age categories, the costs converters might incur for technology research and development are not considered in the cost analysis because they are not expected to change as a result of this rulemaking.

The first outside useful life demonstration option in the proposal ("Option 1") would have required converters to submit sufficient information about the conversion technology for EPA to determine that emissions would not increase. For purposes of this cost estimate, we assumed that testing, as is required for the intermediate age program, would sufficiently satisfy the Option 1 good engineering judgment demonstration requirement. *See* Section VII.C references to total costs for exhaust and evaporative emissions testing.

The second outside useful life option, ("Option 2") would have required outside useful life converters to submit test data showing compliance with the numerical inside useful life standard, or Federal test procedure data from before and after testing showing that emissions did not increase after conversion. The potential need for two sets of tests, before and after conversion, means that the testing costs for exhaust and evaporative emissions tests under Option 2 could range from the same as Option 1 to double what they would be under Option 1. *See* Section VII.C for references to total costs for exhaust and evaporative emissions testing.

EPA is finalizing the third option ("Option 3"), which adds the intermediate age OBD scan tool test procedure to the Option 1 good engineering judgment demonstration requirement. Thus the estimated compliance cost for outside useful life conversions would be similar to the intermediate age compliance cost. Testing costs may be higher should a

[102] Because this analysis assumes that capital and development costs are unchanged by this rulemaking, we have chosen to amortize the cost of a scan tool over 10 conversion test groups, attributing $40 per required data submission. In addition, two hours labor cost at $57.97 per hour + two hours overhead + 6.5%.general and administrative are also attributed to this test. This results in a total of about $287 per OBD scan tool test.

[103] 75 FR 29624 (May 26, 2010).

conversion manufacturer perform pre-conversion and post-conversion testing to demonstrate that the conversion system maintains the performance of the emission control system.

VIII. Associated Costs for Heavy-Duty Engines

The costs associated with achieving compliance under this final rule are expected to be the same or less, on an engine family basis, than the current cost of compliance for clean alternative fuel conversion of heavy-duty engines. The amount of cost reduction will vary based on specific circumstances such as conversion technology, fuel type, engine age and model year, conversion manufacturer sales volume, and the gross vehicle weight rating (GVWR) of the application on which the converted engine is intended to be used. The costs converters might incur for technology research and development are not considered in the cost analysis because they are not expected to change as a result of this rulemaking.

EPA analyzed the cost of obtaining a certificate of conformity under previous fuel conversion regulations and used those estimates as a baseline cost. All cost analyses in this section are intended to apply to conversions to any fuel.

The information available to EPA about heavy-duty conversion costs is limited. For example, EPA received seven MY 2008 certification applications from four conversion manufacturers and only three MY 2009 applications from three different manufacturers. Based on the limited historical data on heavy-duty conversions, EPA has estimated the cost a converter would incur to satisfy the demonstration requirements under these revised regulations compared to the baseline certification costs.

A. Baseline Costs

Baseline costs were derived by determining the cost of obtaining exhaust and evaporative emission certificates for a new engine family under previous regulations and procedures. A new engine family is a family that has not been previously certified as an alternative fuel conversion. After the first certification, the manufacturer may use the same test data to obtain certificates of conformity in subsequent years, if desired. Engine families certified this way are referred to as "carry-overs." The cost of a carry-over family is mostly limited to the certification fee and minor labor costs.

Some converters who have obtained certificates in recent years may notice that the estimated baseline cost is higher than the costs they actually incurred. This is because EPA's baseline cost analysis includes expenses for evaporative emissions and OBD testing. Many heavy-duty engine converters to date have been exempt from these testing requirements.[104] However, it is important to include these testing costs in the baseline estimate because engine converters will be subject to OBD testing in the future, and evaporative emissions testing is required for all fuel types to which an evaporative emissions standard applies.

This cost estimate does not consider expenses converters may incur to develop and design their conversion system. Typical product development costs include research, expert consultation, preliminary or shakedown testing, and other expenses associated with perfecting system functionality. Rather, this analysis estimates the expected cost of satisfying the EPA testing and/or demonstration requirement.

Estimated labor costs include the time, engineering, managerial, legal and support staff spends performing the various activities associated with completing an application for certification and any necessary updates (running changes). These activities include data gathering and analysis, reviewing regulations, and recordkeeping. To estimate labor costs, EPA used the Bureau of Labor Statistics' (BLS) National Industry-specific Occupational Wage Estimates (May 2008) for the Motor Manufacturing Industry under the North American Industry Classification System (NAICS) Code 336100. Mean hourly rates were used and then increased by a factor of 2.1 to account for benefits and overhead. Table VIII.A–1 summarizes this information and presents the Standard Occupational Classification (SOC) code for each occupation used to estimate labor costs.

TABLE VIII.A–1—LABOR CATEGORIES AND COSTS USED TO CALCULATE HEAVY-DUTY ENGINE COSTS BASIS

Occupation	SOC code No.	Mean hourly rate (BLS)	210%
Mechanical Engineers	17–2141	$37.59	$78.94
Engineering Managers	11–9041	54.56	114.58
Lawyers	23–1011	67.14	140.99
Secretaries, Except Legal, Medical and Executive	43–6014	19.76	41.50
Mechanical Engineering Technicians	17–3029	31.53	66.21
Engine and Other Machine Assemblers	51–2031	24.56	51.58
Truck Drivers, Heavy and Tractor-Trailer	53–3032	26.69	56.05

Conversion manufacturers are also required to pay a certification fee under the authority of Section 217 of the CAA and the Independent Offices Appropriation Act (31 U.S.C. 9701). This fee is updated every calendar year to reflect changes in EPA labor costs and the number of certificates issued each year. The costs basis analysis includes the appropriate 2010 fee for exhaust ($35,967) and evaporative ($511) certification. The fees rule allows for a reduction in fee based on the "projected aggregate retail price of all vehicles or engines covered by that certificate" (69 FR 26226, Section F). Converters have historically been able to take advantage of the reduced fee provision; however, EPA has used the full fee for the cost basis in this analysis.

1. Baseline Costs of Certification for One Heavy-Duty Exhaust Engine

Historically, all conversion manufacturers who have certified converted heavy-duty engines are small manufacturers that do not own testing facilities. They hire independent laboratories to test their engines. EPA does not expect that to change in the foreseeable future. EPA estimates that the cost of testing a heavy-duty engine

[104] *See* for example, 40 CFR 86.010–18(o)(1)(v).

for exhaust emissions in an independent laboratory is approximately $30,000. Other operation and maintenance costs include shipping engines to test sites, lodging for manufacturer employees to oversee testing, recordkeeping costs, and the cost of preparing and submitting the application for certification.

Since EPA does not expect manufacturers to build testing laboratories or facilities in response to this rule, no capital costs have been added to the cost basis.

a. Baseline Costs Associated With Obtaining One Heavy-Duty Exhaust Certificate of Conformity

TABLE VIII.A–2—BASELINE COSTS ASSOCIATED WITH OBTAINING ONE HEAVY-DUTY EXHAUST CERTIFICATE

Item	Estimated cost
Exhaust Testing	$30,000
Labor	9,653
Shipping Engines to Test Site	2,500
Lodging	250
Other Operating and Maintenance Costs	19
Exhaust Certification Subtotal	42,422
Certification Fee for 2010	35,967
Total	78,389

b. Baseline Costs Associated With Obtaining One Heavy-Duty Evaporative Certificate of Conformity

Manufacturers and converters of Otto-cycle engines are required to demonstrate compliance with evaporative emissions requirements and obtain an evaporative emissions as well as an exhaust emissions certificate of conformity. EPA is including the costs for both evaporative and exhaust certificates in the baseline estimate. As with exhaust certificates, the unit of certification for evaporative emissions is a group of engines with similar evaporative emission characteristics known as an evaporative engine family. Exhaust and evaporative families are not necessarily identical. Engines grouped into several exhaust engine families may belong to only one evaporative family, and vice versa.

TABLE VIII.A–3—BASELINE COSTS ASSOCIATED WITH OBTAINING ONE HEAVY-DUTY EVAPORATIVE CERTIFICATE

Item	Estimated cost
Evaporative Testing	$7,030
Labor	2,431
Other Operating and Maintenance Costs	13
Evaporative Certification Subtotal	9,474
Certification Fee for 2010	511
Total	9,985

c. Costs Associated With OBDII Demonstration Testing (Engine Family Basis)

To date, heavy-duty engine converters have either been exempt from OBD testing requirements, or have been able to satisfy requirements by providing EPA with light-duty carry-across data, or with a record of California Air Resources Board approval of the OBD system.[105] Therefore EPA does not have any information about the cost of conducting heavy-duty engine OBD demonstration testing.

Therefore, EPA is adopting the $26,317 estimate developed for light-duty OBD to also estimate heavy-duty OBD certification costs. *See* Section VII.A(1)(a)(c), Table VII.A–4.

In summary, the baseline cost of fully certifying a HD engine family, including evaporative and OBD certification is $114,692, as indicated in Table VIII.A–4.

TABLE VIII.A–4—BASELINE COST OF CERTIFICATION FOR ENGINE FUEL CONVERSION

Item	Estimated cost
Exhaust Certification	$42,422
Exhaust Certification Fee	35,967
Evaporative Certification	9,474
Evaporative Certification Fee	511
OBD Compliance Demonstration	26,317
Total	114,692

[105] *See* 40 CFR 86.005–17 and 40 CFR 86.007–17.

3 Baseline Cost Analysis Based on Four Exhaust Engine Families and Four Evaporative Families

Based on the cost of fully certifying one engine family for both exhaust and evaporative emissions, EPA has estimated the current baseline cost of certifying four heavy-duty conversion families, including all testing, associated labor, overhead, and general and administrative costs. For the purpose of this estimate, EPA assumed that these four exhaust engine families will belong to two evaporative families. This assumption reflects the fact that manufacturers tend to use the same evaporative system for multiple exhaust families. The estimated cost of four exhaust engine families and two evaporative families would be about $438,796 (Table VIII.A–5). Please *see* the next section for an explanation of why EPA has chosen to estimate the cost on four families.

TABLE VIII.A–5—BASELINE COST OF CERTIFYING FOUR EXHAUST ENGINE FAMILIES AND TWO EVAPORATIVE FAMILIES

Item	Estimated cost (one engine family)	Number of engine families	Total cost
Exhaust Certification	$42,422	4	$169,689
Exhaust Certification Fee	35,967	4	143,868
Evaporative Certification	9,474	2	18,949
Evaporative Certification Fee	511	2	1,022
OBD Compliance Demonstration	26,317	4	105,268
Total	114,692	.....	438,796

B. Certified Conversion Costs Under the Revised Rule

The number of engines in a typical heavy-duty engine family has historically been lower than the number of vehicles in a light-duty test group. Since the cost of certification is spread over a smaller pool of engines, it is more expensive to certify a heavy-duty family on a per engine basis.

EPA determined that the current data are not sufficient to develop a scaling factor that could be applied to calculate the cost of certification under the new rule. Instead, EPA believes it is more appropriate to illustrate how the regulations would affect a converter seeking certification. This hypothetical scenario is partly based on the actual case of a converter who certified four families in 2008. The scenario is also used for intermediate age and outside useful life estimates. As mentioned previously, the costs converters might incur for technology research and development are not considered in the cost analysis because they are not expected to change as a result of this rulemaking.

1. Baseline Scenario

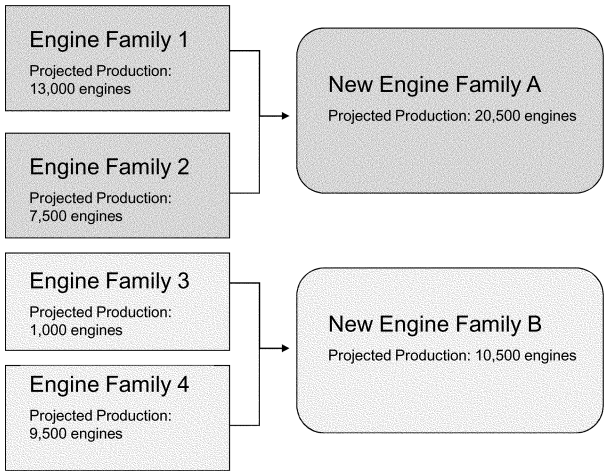
In MY 2008, Converter X obtained certificates of conformity with heavy-duty exhaust emission regulations for four OEM engine families. Converter X used regulations found at 40 CFR 86.000–24 to determine how many exhaust engine families, and therefore, how many conversion certificates it needed. For the purpose of this demonstration, EPA will assume that Converter X submitted one set of test data set and paid one full fee for each exhaust certificate. If Converter X also pursued evaporative certification for two families separately, it would have to pay for two evaporative tests and two evaporative fees. In addition, OBD approval was obtained. As shown in Table VIII.A–5 in the previous section, the estimated cost for this scenario is $438,796.

2. Scenario under Revised Regulations

After reviewing the characteristics of each engine family as reported in the applications for certification, EPA applied the criteria for combining multiple engine families contained in the final rule. For a list of criteria, *see* Section IV.A.2.b. Had the engine family combinations been available to Converter X, Converter X would have been able to combine two of its engine families into a single engine family A, and the remaining two engine families into engine family B. Figure VIII.B–1 illustrates this combination.

Figure VIII.B-1

Possible Engine Family Combinations for Converter X



By submitting only two exhaust certificate applications, Converter X would only need to perform two tests and pay two fees (down from four each), thus cutting its costs of certifying its exhaust engine families in half (Table VIII.B–2).

TABLE VIII.B–2—COST OF CERTIFYING TWO EXHAUST ENGINE FAMILIES AND TWO EVAPORATIVE FAMILIES UNDER REVISED RULE

Item	Estimated cost (one engine family)	Number of engine families	Total cost
Exhaust Certification	$42,422	2	$84,845
Exhaust Certification Fee	35,967	2	71,934
Evaporative Certification	9,474	2	18,949
Evaporative Certification Fee	511	2	1,022
OBD Compliance Demonstration	26,317	2	52,634
Total	114,692	2	229,383

The total cost of certifying the same engines under the revised rule is $229,383, representing a 48% savings for Converter X. The cost of certification is also spread over a larger pool of engines, lowering the cost per unit, as Figure VIII.B–1 shows. The ability to cut costs in this way translates into a more cost effective scenario for heavy-duty converters able to use the new engine family combination criteria.

C. Intermediate Age Engine Compliance Costs

The previous fuel conversion process required certification regardless of the age of the engine being converted. Therefore the baseline costs presented in Section VIII.A also apply to intermediate age heavy-duty engines. Under the revised rule, converters of intermediate age engines must still submit test data to demonstrate compliance with applicable standards, but the test data may cover a broader group of engines, as described in Section VIII.B. In addition, converters of intermediate age engines are no longer required to pay fees.

The revised rule further reduces cost because converters of intermediate age engines will no longer need to submit OBD certification data. Instead the revised rule requires converters to ensure that the OBD system remains fully functional in the converted engine. To demonstrate that the OBD system is functional, the converter must interrogate the OBD system with a scan tool device, submit a copy of the OBD results to EPA and attest that the OBD system works properly. Costs associated with this form of OBD demonstration are limited to the cost of a heavy-duty OBD scan tool, periodic software updates [106] and labor costs associated with obtaining and submitting the print-out.

EPA has found that the costs of OBD scan tools for heavy-duty trucks vary widely, depending on the size of the vehicle. For trucks weighing less than 14,000 pounds, OBD scan tools range

[106] Software updates are mainly used to add vehicle models to the list of vehicles the OBD scan tool is capable of scanning. Since EPA is including the cost of a new scan tool in its OBD demonstration estimate for intermediate age and outside useful life engine conversions, adding the cost of software updates does not appear necessary here.

between $90 and $1,000. The less expensive ones are usually specific to a particular vehicle make and model. For trucks weighing between 14,001 and 33,000 pounds, OBD scan tools range between $1,300 and $2,500, but most cost around $1,500. For the largest trucks, over 33,000 pounds, scan tools cost as much as $8,000. Since the majority of applications for certification of converted engines are expected to be for engines used in applications weighing less than 33,000 pounds, EPA has chosen $1,500 as a cost representative of what the average converter is likely to pay for an OBD scan tool.

In addition to the cost of an OBD scan tool, converters of intermediate age engines will incur costs for labor associated with conducting the scanning procedure, gathering data and submitting it to EPA. EPA estimates these cost to amount to approximately $157 per engine family. Table VIII.C–1 summarizes the estimated cost of obtaining a heavy-duty OBD scan tool and generating a scan report for one engine family.

TABLE VIII.C–1—COSTS ASSOCIATED WITH OBTAINING A HD OBD SCAN TOOL AND GENERATING REPORTS FOR ONE ENGINE FAMILY

Item	Estimated cost
OBD Scan Tool	$1,500
Labor	158
Total	1,658

If the engine families Converter X certified in our previous scenario were intermediate age engines, Converter X would realize savings due to (1) engine family groupings, (2) the lack of a certification fee, and (3) lower OBD demonstration costs. As shown in Table VIII.C–2, the cost to Converter X would be approximately $107,109. This represents savings of about $331,687or 76% when compared to the baseline.

TABLE VIII.C–2—COST OF TWO INTERMEDIATE AGE CONVERSIONS CERTIFICATION UNDER REVISED RULE

[Compared to baseline cost estimates and new and nearly new engine certification under the revised rule]

Item	Baseline cost for four exhaust and two evap families (certification)	Cost for two exhaust and two evap families (certification of new and nearly new—revised rule)	Cost for two exhaust and two evap families (intermediate age—revised rule)
Exhaust Certification	$169,689	$84,845	$84,845
Exhaust Certification Fee	143,868	71,934	.....
Evaporative Certification	18,949	18,949	18,949
Evaporative Certification Fee	1,022	1,022	.....
OBD Compliance Demonstration	105,268	52,634	N/A
OBD scan tool report and statement of compliance	N/A	N/A	3,316
Total	438,796	229,383	107,109

D. Outside Useful Life Engine Compliance Costs

As explained in Section VII–D, EPA presented three options for outside useful life engine conversions in the proposed rule. Today, EPA is finalizing "Option 3", which adds the intermediate age OBD scan tool test procedure to the Option 1 good engineering judgment demonstration requirement.

EPA used the approach described in previous sections to estimate the cost of converting outside useful life heavy-duty engines and concluded that costs would be the same or less than those incurred by converters of intermediate age heavy-duty engines. Please *see* Table VIII.C.2 for further detail on intermediate age conversion costs.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO. OMB confirmed this rulemaking was non-significant on December 7, 2010 and waived review.

EPA prepared an analysis of the potential costs and benefits associated with this action. Cost analyses are summarized in Sections VII and VIII of this preamble.

B. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) documents prepared by EPA have been assigned EPA ICR numbers 0783.59 and 1684.17. Any information collection requirements in ICR numbers 0783.59 and 1684.17 which are not covered by existing OMB control numbers 2060–0104 and 2060–0287, are not enforceable until OMB approves them.

The Agency is finalizing requirements for manufacturers to submit information to ensure compliance with the provisions in this rule. This includes a variety of requirements for alternative fuel vehicle/engine converters who seek an exemption from the anti-tampering prohibition in section 203(a)(3) of the Clean Air Act. Under Title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*) EPA is required to establish motor vehicle emission standards that apply throughout useful life, and to verify through issuance of a certificate of conformity that any vehicle or engine entered into commerce complies with the established emission standards. Under Section 203 of the CAA, once certified, the vehicle or engine generally may not be altered from its certified configuration. EPA has established policies through which conversion manufacturers can demonstrate that the conversion does not compromise emissions compliance. This action amends those regulations, located in 40 CFR part 85, subpart F. Section 208(a) of the Act requires that vehicle/engine

manufacturers and others subject to the Act provide information the Administrator may reasonably require to determine compliance with the regulations; submission of the information is therefore mandatory for securing the regulatory exemption from the tampering prohibition set forth in 40 CFR part 85, subpart F. We will consider confidential all information meeting the requirements of section 208(c) of the Clean Air Act.

As described in Sections VII and VIII of this preamble, compliance costs per test group or engine family are expected to decrease overall.

Model years 2009, 2010, and 2011 have exhibited an upward trend in the number of light-duty fuel conversion certificates issued and the number of clean alternative fuel conversion manufacturers. In 2010, 42 light-duty alternative fuel conversion certificates were issued for seven different conversion manufacturers. In 2011, EPA has thus far issued 100 light duty fuel conversion certificates; however about half of those certificates are renewals, which will no longer be necessary under this new rule. For this final rule, we are assuming an estimated 50 light duty certificates for eight different conversion manufacturers, since this is similar to the 2010 value and the 2011 number if renewals are no longer needed. As shown in Table IX–1, the total annual industry paperwork burden associated with the light-duty vehicle program is about 18,535 hours and $185,093 in annual capital and operations and maintenance costs based on a projection of 8 respondents. The estimated burden for converters is a total estimate for both new and existing reporting requirements. This represents an estimated reduction in burden from previous requirements of 11,203 hours and $89,103 in non-labor costs for light-duty converters. The total heavy-duty conversion industry is expected to grow as a result of this rule, therefore increasing industry-wide costs. However, costs per respondent are likely to decrease, by as much as 76 percent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

TABLE IX–1—ESTIMATED BURDEN FOR REPORTING AND RECORDKEEPING REQUIREMENTS

Industry sector	Number of respondents	Annual burden (hours)	Estimated annual capital and O&M costs	Estimated annual labor cost	Estimated total costs
Light-Duty Vehicles (ICR 0783.59)	8	18,535	$185,093	$1,060,272	$1,245,365
On-Highway Heavy-Duty Engines (ICR 1684.17)	8	1,578	622,389	135,078	757,468
Total	16	20,113	807,482	1,195,350	2,002,833

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) Small businesses that are primarily engaged in engine and motor vehicle parts manufacturing, specifically aftermarket fuel conversion systems for vehicles and engines as included in the definitions by NAICS codes 335312, 336312, 336322, and 336399 with fewer than 750–1000 employees and 811198 with annual revenue below $7 million (based on Small Business Administration size standards at 13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

To qualify for an exemption from the prohibition on tampering, previous alternative fuel conversion regulations required converters to complete vehicle and engine certification testing, data submittal and compliance procedures using OEM new vehicle certification procedures. The previous certification process largely will be retained for conversion of vehicles and engines that are about two years old or newer, with a few amendments which may reduce the testing burden. The amendments include provisions such as (1) a statement of compliance using good engineering judgment in lieu of HCHO testing analysis for certain alternative fuels, (2) the use of conversion factors to calculate NMOG from NMHC in lieu

of speciation testing for some alternative fuels, and (3) allowing the combination of OEM test groups into larger testing combinations for aftermarket fuel conversion.

In addition, this final rule creates an intermediate age and outside useful life compliance program as an alternative to vehicle and engine certification of fuel conversion of older vehicles and engines. The intermediate age and outside useful life programs will allow conversion manufacturers to conduct fewer tests and will provide a streamlined data-submittal process. These programs may also allow for one set of test data to apply to a broader set of OEM vehicles.

We have therefore concluded that today's final rule will generally relieve or not increase regulatory burden for each affected small entity. The number of potentially affected small entities subject to this rule is projected to be less than 20 per year. The degree of cost reduction for each entity will vary based on conversion technology, fuel type, vehicle or engine age, applicability, conversion manufacturer preference, and the manufacturer's annual sales volume. *See* Sections VII and VIII of this preamble for further details.

D. Unfunded Mandates Reform Act

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments. The rule imposes no enforceable duty on any State, local or Tribal governments. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for the private sector in any one year. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA. EPA has determined that this rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications."

"Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. EPA and the States will maintain the current distribution of power and responsibility. Thus, Executive Order 13132 does not apply to this action.

Although section 6 of Executive Order 13132 does not apply to this action, EPA did consult with State and local officials and representatives of State and local governments in developing this action. EPA received comments from four separate State agencies/officials: The State of Utah, Office of the Governor Energy Advisor, Dianne Nielson; The Texas Railroad Commission, Michael Williams, Commissioner; The Texas Commission on Environmental Quality, Mark Vickery, Executive Director; and the Florida Department of Environmental Protection, Sandra Veazey, Chief Bureau of Air Monitoring and Mobile Sources. None of the State agency comments expressed federalism implications or concerns. EPA generally received positive comments from State agencies/officials about the goals of the proposed rule. State agency comments about program details are included in the Response to Comments document in the docket.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this action. EPA specifically solicited additional comment on the proposal from Tribal officials, and received no comments from Tribal officials.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it is not economically significant as defined in EO 12866 and does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve new technical standards and EPA received no comments concerning any voluntary consensus standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection

provided to human health or the environment. This action changes some required procedures but does not relax the control measures on sources regulated by the rule and therefore will not cause emissions increases from these sources.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

L. Administrative Procedure Act

Section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d) generally requires agencies to publish substantive rules at least 30 days prior to the effective dates of such rules. One exception to that general requirement is that an agency may establish an immediate effective date for a rule "which grants or recognizes an exemption or relieves a restriction." EPA has decided that this action will be effective immediately upon publication in the **Federal Register** because this action recognizes an exemption to the Clean Air Act's section 203 tampering prohibition.

X. Statutory Provisions and Legal Authority

Statutory authority for the regulation of clean alternative fuel conversion can be found in 42 U.S.C. 7401–7617q. The Administrator has determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d).[107]

List of Subjects in 40 CFR Parts 85 and 86

Environmental protection, Administrative practice and procedure, Alternative fuel conversion, Confidential business information, Motor vehicle pollution, Reporting and recordkeeping requirements.

[107] *See* CAA section 307(d)(1)(V).

Dated: March 29, 2011.

Lisa P. Jackson,

Administrator.

For the reasons set forth in the preamble title 40, Chapter 1 of the Code of Federal Regulations is amended as follows:

PART 85—CONTROL OF AIR POLLUTION FROM MOBILE SOURCES

■ 1. The authority citation for part 85 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 2. Subpart F of part 85 is revised to read as follows:

Subpart F—Exemption of Clean Alternative Fuel Conversions From Tampering Prohibition

Sec.

Subpart F—Exemption of Clean Alternative Fuel Conversions From Tampering Prohibition

§ 85.501 General applicability.

(a) This subpart describes the provisions related to an exemption from the tampering prohibition in Clean Air Act section 203(a) (42 U.S.C. 7522(a)) for light-duty vehicles, light-duty trucks, medium-duty passenger vehicles, heavy-duty vehicles, and heavy-duty engines. This subpart F does not apply for highway motorcycles or for nonroad or stationary engines or equipment.

(b) For purposes of this subpart, the term "you" generally means a clean alternative fuel conversion manufacturer, which may also be called "conversion manufacturer" or "converter".

§ 85.502 Definitions.

The definitions in this section apply to this subpart. All terms that are not defined in this subpart have the meaning given in 40 CFR part 86. All terms that are not defined in this subpart or in 40 CFR part 86 have the meaning given in the Clean Air Act. The definitions follow:

Clean alternative fuel conversion (or "fuel conversion" or "conversion system") means any alteration of a motor vehicle/engine, its fueling system, or the integration of these systems, that allows the vehicle/engine to operate on a fuel or power source different from the fuel or power source for which the vehicle/engine was originally certified; and that is designed, constructed, and applied consistent with good engineering judgment and in accordance with all applicable regulations. A clean alternative fuel conversion also means the components, design, and instructions to perform this alteration.

Clean alternative fuel conversion manufacturer (or "conversion manufacturer" or "converter") means any person that manufactures, assembles, sells, imports, or installs a motor vehicle/engine fuel conversion for the purpose of use of a clean alternative fuel.

Conversion model year means the clean alternative fuel conversion manufacturer's annual production period which includes January 1 of such calendar year. A specific model year may not include January 1 from the previous year or the following year. This is based on the expectation that production periods generally run on consistent schedules from year to year. Conversion model years may not circumvent or skip an annual production period. The term conversion model year means the calendar year if the converter does not have a different annual production period.

Date of conversion means the date on which the clean alternative fuel conversion system is fully installed and operable.

Dedicated vehicle/engine means any vehicle/engine engineered and designed to be operated using a single fuel.

Dual-fuel vehicle/engine means any vehicle/engine engineered and designed to be operated on two or more different fuels, but not on a mixture of the fuels.

Heavy-duty engines describes all engines intended for use in heavy-duty vehicles, covered under the applicability of 40 CFR part 86, subpart A.

Light-duty and heavy-duty chassis certified vehicles describes all light-duty vehicles, light-duty trucks, medium duty passenger vehicles, and heavy-duty complete and incomplete vehicles covered under the applicability of 40 CFR part 86, subpart S.

Mixed-fuel vehicle/engine means any vehicle/engine engineered and designed to be operated on the original fuel(s), alternative fuel(s), or a mixture of two or more fuels that are combusted together. Mixed-fuel vehicles/engines include flexible-fuel vehicles/engines as defined in 40 CFR part 86 subpart S.

Original equipment manufacturer (OEM) means the original manufacturer of the new vehicle/engine or relating to the vehicle/engine in its original certified configuration.

Original model year means the model year in which a vehicle/engine was originally certified by the original equipment manufacturer, as noted on the certificate and on the emission control information label.

We (us, our) means the Administrator of the Environmental Protection Agency or any authorized representative.

§ 85.505 Overview.

(a) You are exempted from the tampering prohibition in Clean Air Act section 203(a)(3) (42 U.S.C. 7522)(a)(3) ("tampering") if you satisfy all the provisions of this subpart.

(b) The tampering exemption provisions described in this subpart are differentiated based on the age of the vehicle/engine at the point of conversion as follows:

(1) "New and relatively new" refers to a vehicle/engine where the date of conversion is in a calendar year that is not more than one year after the original model year. *See* § 85.510 for provisions that apply specifically to new and relatively new vehicles/engines.

(2) "Intermediate age" refers to a vehicle/engine that has not exceeded the useful life (in years, miles, or hours of operation) applicable to the vehicle/engine as originally certified, excluding new and relatively new vehicles/engines. *See* § 85.515 for provisions that apply specifically to intermediate-age vehicles/engines.

(3) "Outside useful life" refers to any vehicle/engine that has exceeded the useful life (in years, miles, or hours of operation) applicable to the vehicle/engine as originally certified. *See* § 85.520 for provisions that apply specifically to outside useful life vehicles/engines.

(c) If the converted vehicle/engine is a dual-fuel or mixed-fuel vehicle/engine, you must submit test data using each type of fuel, except that if you wish to certify to the same standards as the OEM vehicle/engine, you may omit testing for the fuel originally used to certify the vehicle/engine if you comply with § 85.510(b)(10)(ii), (iii), and (iv), § 85.515(b)(10)(iii)(B), (C), and (D), or § 85.520(b)(6)(iii)(B), (C), and (D), as applicable.

(d) This subpart specifies certain reporting requirements. We may ask you to give us more information than we specify in this subpart to determine whether your vehicles/engines conform to the requirements of this subpart. We may ask you to give us less information or do less testing than we specify in this subpart.

(e) EPA may require converters to submit vehicles/engines for EPA testing under any of the three age based programs. Under § 85.510 or § 85.515, if a vehicle/engine is selected for confirmatory testing as part of the demonstration and notification process, the vehicle/engines must satisfy the applicable intermediate and full useful life standards using the appropriate deterioration factors to qualify for an exemption from the tampering prohibition. If an outside useful life vehicle/engine is selected for testing, the vehicle/engine must demonstrate that emissions are maintained or improved upon after conversion to qualify for an exemption from the tampering prohibition.

(f) If you have previously used small volume conversion manufacturer or qualified small volume test group/engine family procedures and you may exceed the volume thresholds using the sum described in § 85.535(f) to determine small volume status in 40 CFR 86.1838–01, 40 CFR 86.098–14, and 40 CFR 86.096–24(e)(2) as appropriate, you must satisfy the requirements for conversion manufacturers who do not qualify for small volume exemptions or your exemption from tampering is no longer valid.

(g) An exemption from the prohibition on tampering applies to previously issued alternative fuel conversion certificates of conformity for the applicable conversion test group/engine family and/or evaporative/refueling family, as long as the conditions under which the certificate was issued remain unchanged, such as small volume manufacturer or qualified small volume test group/engine family status. Your exemption from tampering is valid only if the conversion is installed on the OEM test groups/engine families and/or evaporative emissions/refueling families listed on the certificate.

(h) The applicable useful life of a clean alternative fuel converted vehicle/engine shall end at the same time the OEM vehicle's/engine's original useful life ends.

§ 85.510 Exemption provisions for new and relatively new vehicles/engines.

(a) You are exempted from the tampering prohibition with respect to new and relatively new vehicles/engines if you certify the conversion system to the emission standards specified in § 85.525 as described in paragraph (b) in this section; you meet the labeling and packaging requirements in § 85.530 before you sell, import or otherwise facilitate the use of a clean alternative fuel conversion system; and you meet the liability, recordkeeping, and end of year reporting requirements in § 85.535.

(b) Certification under this section must be based on the certification procedures such as those specified in 40 CFR part 86, subparts A, B, and S and 40 CFR part 1065, as applicable, subject to the following exceptions and special provisions:

(1) Test groups and evaporative/refueling families for light-duty and heavy-duty chassis certified vehicles.

(i) Small volume conversion manufacturers and qualified small volume test groups.

(A) If criteria for small volume manufacturer or qualified small volume test groups are met as defined in 40 CFR 86.1838–01, you may combine light-duty vehicles or heavy-duty vehicles which can be chassis certified under 40 CFR part 86, subpart S using good engineering judgment into conversion test groups if the following criteria are satisfied instead of those specified in 40 CFR 86.1827–01.

(1) Same OEM and OEM model year.

(2) Same OBD group.

(3) Same vehicle classification (*e.g.* light-duty vehicle, heavy-duty vehicle).

(4) Engine displacement is within 15% of largest displacement or 50 CID, whichever is larger.

(5) Same number of cylinders or combustion chambers.

(6) Same arrangement of cylinders or combustion chambers (*e.g.* in-line, v-shaped).

(7) Same combustion cycle (*e.g.,* two stroke, four stroke, Otto-cycle, diesel-cycle).

(8) Same engine type (*e.g.* piston, rotary, turbine, air cooled vs. water cooled).

(9) Same OEM fuel type (except otherwise similar gasoline and E85 flexible-fuel vehicles may be combined into dedicated alternative fuel vehicles).

(10) Same fuel metering system (*e.g.* throttle body injection vs. port injection).

(11) Same catalyst construction (*e.g.* metal vs. ceramic substrate).

(12) All converted vehicles are subject to the most stringent emission standards used in certifying the OEM test groups within the conversion test group.

(B) EPA-established scaled assigned deterioration factors for both exhaust and evaporative emissions may be used for vehicles with over 10,000 miles if the criteria for small volume manufacturer or qualified small volume test groups are met as defined in 40 CFR 86.1838–01. This deterioration factor will be adjusted according to vehicle or engine miles of operation. The

deterioration factor is intended to predict the vehicle's emission levels at the end of the useful life. EPA may adjust these scaled assigned deterioration factors if we find the rate of deterioration non-constant or if the rate differs by fuel type.

(C) As part of the conversion system description provided in the application for certification, conversion manufacturers using EPA assigned deterioration factors must present detailed information to confirm the durability of all relevant new and existing components and to explain why the conversion system will not harm the emission control system or degrade the emissions.

(ii) Conversion evaporative/refueling families are identical to the OEM evaporative/refueling families unless the OEM evaporative emission system is no longer functionally necessary. You must create any new evaporative families according to 40 CFR 86.1821–01.

(2) Engine families and evaporative/refueling families for heavy-duty engines.

(i) Small volume conversion manufacturers and qualified small volume heavy-duty engine families.

(A) If criteria for small volume manufacturer or qualified small volume engine families are met as defined in 40 CFR 86.098–14 and 40 CFR 86.096–24(e)(2) you may combine heavy-duty engines using good engineering judgment into conversion engine families if the following criteria are satisfied instead of those specified in 40 CFR part 86, subpart A.

(1) Same OEM.

(2) Same OBD group after MY 2013.

(3) Same service class (*e.g.* light heavy-duty diesel engines, medium heavy-duty diesel engines, heavy heavy-duty diesel engines).

(4) Engine displacement is within 15% of largest displacement or 50 CID, whichever is larger.

(5) Same number of cylinders.

(6) Same arrangement of cylinders.

(7) Same combustion cycle.

(8) Same method of air aspiration.

(9) Same fuel type (*e.g.* diesel/gasoline).

(10) Same fuel metering system (*e.g.* mechanical direct or electronic direct injection).

(11) Same catalyst/filter construction (*e.g.* metal vs. ceramic substrate).

(12) All converted engines are subject to the most stringent emission standards. For example, 2005 and 2007 heavy-duty diesel engines may be in the same family if they meet the most stringent (2007) standards.

(13) Same emission control technology (*e.g.,* internal or external EGR).

(B) EPA-established scaled assigned deterioration factors for both exhaust and evaporative emissions may be used for engines with over 10,000 miles if the criteria for small volume manufacturer or qualified small volume engine families are met as defined in 40 CFR 86.098–14 and 40 CFR 86.096–24(e)(2). This deterioration factor will be adjusted according to vehicle or engine miles of operation. The deterioration factor is intended to predict the engine's emission levels at the end of the useful life. EPA may adjust these scaled assigned deterioration factors if we find the rate of deterioration non-constant or if the rate differs by fuel type.

(C) As part of the conversion system description provided in the application for certification, conversion manufacturers using EPA assigned deterioration factors must present detailed information to confirm the durability of all relevant new and existing components and to explain why the conversion system will not harm the emission control system or degrade the emissions.

(ii) Conversion evaporative/refueling families are identical to the OEM evaporative/refueling families unless the OEM evaporative emission system is no longer functionally necessary. You must create any new evaporative families according to 40 CFR 86.096–24(a).

(3) Conversion test groups/engine families for small volume conversion manufacturers and qualified small volume test groups/engine families may include vehicles/engines that are subject to different OEM emission standards; however, all the vehicles/engines certified under this subpart in a single conversion test group/engine family are subject to the most stringent standards that apply for vehicles/engines included in the conversion test group/engine family. For example, if OEM vehicle test groups originally certified to Tier 2, Bin 4 and Bin 5 standards are in the same conversion test group for purposes of fuel conversion, all the vehicles certified in the conversion test group under this subpart are subject to the Tier 2, Bin 4 standards. Conversion manufacturers may choose to certify a conversion test group/engine family to a more stringent standard than the OEM did. The optional, more stringent standard would then apply to all OEM test groups/engine families within the conversion test group/engine family. This paragraph (b)(3) does not apply to conversions to dual-fuel/mixed-fuel vehicles/engines, as provided in paragraph (b)(7) of this section.

(4)–(5) [Reserved]

(6) Durability testing is required unless the criteria for small volume manufacturer or qualified small volume test groups/engine families are met as defined in 40 CFR 86.1838–01, 40 CFR 86.098–14, and 40 CFR 86.096–24(e)(2), as applicable.

(7) Conversion test groups/engine families for conversions to dual-fuel or mixed-fuel vehicles/engines cannot include vehicles/engines subject to different emission standards unless applicable exhaust and OBD demonstrations are also conducted for the original fuel(s) demonstrating compliance with the most stringent standard represented in the test group. However for small volume conversion manufacturers and qualified small volume test groups/engine families the data generated from exhaust emission testing on the new fuel for dual-fuel or mixed-fuel test vehicles/engines may be carried over to vehicles/engines which otherwise meet the test group/engine family criteria and for which the test vehicle/engine data demonstrate compliance with the application vehicle/engine standard. Clean alternative fuel conversion evaporative families for dual-fuel or mixed-fuel vehicles may not include vehicles/engines which were originally certified to different evaporative emissions standards unless evaporative/refueling demonstrations are also conducted for the original fuel(s) demonstrating compliance with the most stringent standard represented in the evaporative/refueling family.

(8) The vehicle/engine selected for testing must qualify as a worst-case vehicle/engine under 40 CFR 86.1828–10 or 40 CFR 86.096–24(b)(2) through (b)(3), as applicable.

(9) OBD requirements.

(i) The OBD system must properly detect and identify malfunctions in all monitored emission-related powertrain systems or components including any new monitoring capability necessary to identify potential emission problems associated with the new fuel.

(ii) Conduct all OBD testing as required for OEM certification.

(iii) In addition to conducting OBD testing as required for certification, submit the following statement of compliance, if the OEM vehicles/engines were required to be OBD equipped. The test group/engine family converted to an alternative fuel has fully functional OBD systems and therefore meets the OBD requirements such as those specified in 40 CFR 86, subparts

A and S when operating on the alternative fuel.

(10) In lieu of specific certification test data, you may submit the following attestations for the appropriate statements of compliance, if you have sufficient basis to prove the statement is valid.

(i) The test group/engine family converted to an alternative fuel has properly exercised the optional and applicable statements of compliance or waivers in the certification regulations such as those specified in 40 CFR part 86, subparts A, B, and S and 40 CFR part 1065. Attest to each statement or waiver in your application for certification.

(ii) The test group/engine family converted to dual-fuel or mixed-fuel operation retains all the OEM fuel system, engine calibration, and emission control system functionality when operating on the fuel with which the vehicle/engine was originally certified.

(iii) The test group/engine family converted to dual fuel or mixed-fuel operation retains all the functionality of the OEM OBD system (if so equipped) when operating on the fuel with which the vehicle/engine was originally certified.

(iv) The test group/engine family converted to dual-fuel or mixed-fuel operation properly purges hydrocarbon vapor from the evaporative emission canister when the vehicle/engine is operating on the alternative fuel.

(11) Certification fees apply per 40 CFR 1027.

(12) A certificate issued under this section is valid starting with the indicated effective date and expires on December 31 of the conversion model year for which it is issued. You may apply for a certificate of conformity for the next conversion model year using the applicable provisions for carryover certification. Even after the certificate expires, your exemption from the prohibition on tampering remains valid for the applicable conversion test group/engine family and/or evaporative/refueling family, as long as the conditions under which the certificate was issued remain unchanged, such as small volume manufacturer or qualified small volume test group/engine family status. Your exemption from tampering is valid only if the conversion is installed on the OEM test groups/engine families and/or evaporative emissions/refueling families listed on the certificate. For example, if you have received a clean alternative fuel conversion certificate of conformity in conversion model year 2011 for converting a 2010 model year OEM test group/evaporative/refueling family, your exemption from tampering continues to apply for the conversion of the same 2010 model year OEM test group/evaporative/refueling family as long as the conditions under which the certificate was issued remain unchanged, such as small volume manufacturer status.

(13) Conversion systems must be properly installed and adjusted such that the vehicle/engine operates consistent with the principles of good engineering judgment and in accordance with all applicable regulations.

§ 85.515 Exemption provisions for intermediate age vehicles/engines.

(a) You are exempted from the tampering prohibition with respect to intermediate age vehicles/engines if you properly test, document and notify EPA that the conversion system complies with the emission standards specified in § 85.525 as described in paragraph (b) of this section; you meet the labeling requirements in § 85.530 before you sell, import or otherwise facilitate the use of a clean alternative fuel conversion system; and you meet the liability, recordkeeping, and end of year reporting requirements in § 85.535. You may also meet the requirements under this section by complying with the requirements in § 85.510.

(b) Documenting and notifying EPA under this section includes demonstrating compliance with all the provisions in this section and providing all notification information to EPA. You may notify us as described in this section instead of certifying the clean alternative fuel conversion system. You must demonstrate compliance with all exhaust and evaporative emissions standards by conducting all exhaust and evaporative emissions and durability testing as required for OEM certification subject to the exceptions and special provisions permitted in § 85.510. This paragraph (b) provides additional special provisions applicable to intermediate age vehicles/engines. Paragraph (b) is applicable to all conversion manufacturers unless otherwise specified.

(1) Conversion test groups for light-duty and heavy-duty chassis certified vehicles may be grouped together into an exhaust conversion test group using the criteria described in § 85.510(b)(1)(i)(A), except that the same OBD group is not a criterion. Evaporative/refueling families may be grouped together using the criteria described in § 85.510(b)(1)(ii).

(2) Conversion engine families for heavy-duty engines may be grouped together into an exhaust conversion engine family using the criteria described in § 85.510(b)(2)(i)(A), except that the same OBD group is not a criterion. Evaporative/refueling families may be grouped together using the criteria described in § 85.510(b)(2)(ii).

(3) Conversion test groups/engine families may include vehicles/engines that are subject to different OEM emission standards; however, all vehicles/engines in a single conversion test group/engine family are subject to the most stringent standards that apply for vehicles/engines included in the conversion test group/engine family. For example, if OEM vehicle test groups originally certified to Tier 2, Bin 4 and Bin 5 standards are in the same conversion test group for purposes of fuel conversion, all the vehicles in the conversion test group under this subpart are subject to the Tier 2, Bin 4 standards. This paragraph (b)(3) does not apply to conversions to dual-fuel/mixed-fuel vehicles/engines, as provided in paragraph (b)(7).

(4) EPA-established scaled assigned deterioration factors for both exhaust and evaporative emissions may be used for vehicles/engines with over 10,000 miles if the criteria for small volume manufacturer or qualified small volume test groups/engine families are met as defined in 40 CFR 86.1838–01, 40 CFR 86.098–14, or 40 CFR 86.096–24(e)(2), as appropriate. This deterioration factor will be adjusted according to vehicle/engine miles or hours of operation. The deterioration factor is intended to predict the vehicle/engine's emission level at the end of the useful life. EPA may adjust these scaled assigned deterioration factors if we find the rate of deterioration non-constant or if the rate differs by fuel type.

(5) As part of the conversion system description required by paragraph (b)(10)(i) of this section, small volume conversion manufacturers and qualified small volume test groups/engine families using EPA assigned deterioration factors must present detailed information to confirm the durability of all relevant new and existing components and explain why the conversion system will not harm the emission control system or degrade the emissions.

(6) Durability testing is required unless the criteria for small volume manufacturer or qualified small volume test groups/engine families are met as defined in 40 CFR 86.1838–01, 40 CFR 86.098–14, or 40 CFR 86.096–24(e)(2), as applicable. Durability procedures for large volume conversion manufacturers of intermediate age light-duty and heavy-duty chassis certified vehicles that follow provisions in 40 CFR 86.1820–01 may eliminate precious

metal composition and catalyst grouping statistic when creating clean alternative fuel conversion durability groupings.

(7) Conversion test groups/engine families for conversions to dual-fuel or mixed-fuel vehicles/engines may not include vehicles/engines subject to different emissions standards unless applicable exhaust and OBD demonstrations are also conducted for the original fuel(s) demonstrating compliance with the most stringent standard represented in the test group/engine family. However the data generated from testing on the new fuel for dual-fuel or mixed/fuel test vehicles/engines may be carried over to vehicles/engines that otherwise meet the conversion test group/engine family criteria and for which the test vehicle/engine data demonstrate compliance with the applicable vehicle/engine standards. Clean alternative fuel conversion evaporative families for dual-fuel or mixed-fuel vehicles/engines cannot include vehicles/engines that were originally certified to different evaporative emissions standards unless evaporative/refueling demonstrations are also conducted for the original fuel(s) demonstrating compliance with the most stringent standard represented in the evaporative/refueling family.

(8) You must conduct all exhaust and all evaporative and refueling emissions testing with a worst-case vehicle/engine to show that the conversion test group/engine family complies with exhaust and evaporative/refueling emission standards, based on the certification procedures such as those specified in 40 CFR part 86, subparts A, B, and S and 40 CFR part 1065.

(9) *OBD requirements.* (i) The OBD system must properly detect and identify malfunctions in all monitored emission-related powertrain systems or components including any new monitoring capability necessary to identify potential emission problems associated with the new fuel. These include but are not limited to: Fuel trim lean and rich monitors, catalyst deterioration monitors, engine misfire monitors, oxygen sensor deterioration monitors, EGR system monitors, if applicable, and vapor leak monitors, if applicable. No original OBD system monitor that is still applicable to the vehicle/engine may be aliased, removed, bypassed, or turned-off. No MILs shall be illuminated after the conversion. Readiness flags must be properly set for all monitors that identify any malfunction for all monitored components.

(ii) Subsequent to the vehicle/engine fuel conversion, you must clear all OBD codes and reset all OBD monitors to not-ready status using an OBD scan tool appropriate for the OBD system in the vehicle/engine in question. You must operate the vehicle/engine with the new fuel on representative road operation or chassis dynamometer/engine dynamometer testing cycles to satisfy the monitors' enabling criteria. When all monitors have reset to a ready status, you must submit an OBD scan tool report showing that with the vehicle/engine operating in the key-on/engine-on mode, all supported monitors have reset to a ready status and no emission related "pending" (or potential) or "confirmed" (or MIL-on) diagnostic trouble codes (DTCs) have been set. The MIL must not be commanded "On" or be illuminated. A MIL check must also be conducted in a key-on/engine-off mode to verify that the MIL is functioning properly. You must include the VIN/EIN number of the test vehicle/engine. If necessary, the OEM evaporative emission readiness monitor may remain unset for dedicated gaseous fuel conversion systems.

(iii) In addition to conducting OBD testing described in this paragraph (b)(9), you must submit to EPA the following statement of compliance, if the OEM vehicles/engines were required to be OBD equipped. The test group/engine family converted to an alternative fuel has fully functional OBD systems and therefore meets the OBD requirements such as those specified in 40 CFR 86, subparts A and S when operating on the alternative fuel.

(10) You must notify us by electronic submission in a format specified by the Administrator with all required documentation. The following must be submitted:

(i) You must describe how your conversion system qualifies as a clean alternative fuel conversion. You must include emission test results from the required exhaust, evaporative emissions, and OBD testing, applicable exhaust and evaporative emissions standards and deterioration factors. You must also include a description of how the test vehicle/engine selected qualifies as a worst-case vehicle/engine under 40 CFR 86.1828–10 or 40 CFR 86.096–24(b)(2) through (b)(3) as applicable.

(ii) You must describe the group of vehicles/engines (conversion test group/conversion engine family) that are covered by your notification based on the criteria specified in paragraph (b)(1) or (b)(2) of this section.

(iii) In lieu of specific test data, you may submit the following attestations for the appropriate statements of compliance, if you have sufficient basis to prove the statement is valid.

(A) The test group/engine family converted to an alternative fuel has properly exercised the optional and applicable statements of compliance or waivers in the certification regulations such as those specified in 40 CFR part 86, subparts A, B, and S and 40 CFR part 1065. Attest to each statement or waiver in your notification.

(B) The test group/engine family converted to dual-fuel or mixed-fuel operation retains all the OEM fuel system, engine calibration, and emission control system functionality when operating on the fuel with which the vehicle/engine was originally certified.

(C) The test group/engine family converted to dual-fuel or mixed-fuel operation retains all the functionality of the OEM OBD system (if the OEM vehicles/engines were required to be OBD equipped) when operating on the fuel for which the vehicle/engine was originally certified.

(D) The test group/engine family converted to dual-fuel or mixed-fuel operation properly purges hydrocarbon vapor from the evaporative emission canister when the vehicle/engine is operating on the alternative fuel.

(iv) Include any other information as the Administrator may deem appropriate to establish that the conversion system is for the purpose of conversion to a clean alternative fuel and meets applicable emission standards.

(11) [Reserved]

(12) Your exemption from the prohibition on tampering remains valid for the applicable conversion test group/engine family and/or evaporative/refueling family, as long as the conditions under which you previously complied remain unchanged, such as small volume manufacturer or qualified small volume test group/engine family status. Your exemption from tampering is valid only if the conversion is installed on the OEM test groups/engine families and/or evaporative emissions/refueling families listed on the notification. For example, if you have complied properly with the provisions in this section in calendar year 2011 for converting a model year 2006 OEM test group/evaporative/refueling family, your exemption from tampering continues to apply for the conversion of the same model year 2006 OEM test group/evaporative/refueling family as long as the conditions under which the notification was submitted remain unchanged.

(13) Conversion systems must be properly installed and adjusted such that the vehicle/engine operates consistent with the principles of good

engineering judgment and in accordance with all applicable regulations.

§ 85.520 Exemption provisions for outside useful life vehicles/engines.

(a) You are exempted from the tampering prohibition with respect to outside useful life vehicles/engines if you properly document and notify EPA that the conversion system satisfies all the provisions in this section; you meet the labeling requirements in § 85.530 before you sell, import or otherwise facilitate the use of a clean alternative fuel conversion system; and you meet the applicable requirements in § 85.535. You may also meet the requirements under this section by complying with the provisions in § 85.515.

(b) Documenting and notifying EPA under this section includes the following provisions:

(1) You must notify us as described in this section.

(2) Conversion test groups, evaporative/refueling families, and conversion engine families may be the same as those allowed for the intermediate age vehicle/engine program in § 85.515(b)(1) and (2).

(3) You must use good engineering judgment to specify, use, and assemble fuel system components and other hardware and software that are properly designed and matched for the vehicles/engines in which they will be installed. Good engineering judgment also dictates that any testing or data used to satisfy demonstration requirements be generated at a quality laboratory that follows good laboratory practices and that is capable of performing official EPA emission tests.

(4) *OBD requirements.* (i) The OBD system must properly detect and identify malfunctions in all monitored emission-related powertrain systems or components including any new monitoring capability necessary to identify potential emission problems associated with the new fuel. These include but are not limited to: Fuel trim lean and rich monitors, catalyst deterioration monitors, engine misfire monitors, oxygen sensor deterioration monitors, EGR system monitors, if applicable, and vapor leak monitors, if applicable. No original OBD system monitor that is still applicable to the vehicle/engine may be aliased, removed, bypassed, or turned-off. No MILs shall be illuminated after the conversion. Readiness flags must be properly set for all monitors that identify any malfunction for all monitored components.

(ii) Subsequent to the vehicle/engine fuel conversion, you must clear all OBD codes and reset all OBD monitors to not-ready status using an OBD scan tool appropriate for the OBD system in the vehicle/engine in question. You must operate the vehicle/engine with the new fuel on representative road operation or chassis dynamometer/engine dynamometer testing cycles to satisfy the monitors' enabling criteria. When all monitors have reset to a ready status, you must submit an OBD scan tool report showing that with the vehicle/engine operating in the key-on/engine-on mode, all supported monitors have reset to a ready status and no emission related "pending" (or potential) or "confirmed" (or MIL-on) diagnostic trouble codes (DTCs) have been stored. The MIL must not be commanded "On" or be illuminated. A MIL check must also be conducted in a key-on/engine-off mode to verify that the MIL is functioning properly. You must include the VIN/EIN number of the test vehicle/engine. If necessary, the OEM evaporative emission readiness monitor may remain unset for dedicated gaseous fuel conversion systems.

(iii) In addition to conducting OBD testing described in this paragraph (b)(4), you must submit to EPA the following statement of compliance, if the OEM vehicles/engines were required to be OBD equipped. The test group/engine family converted to an alternative fuel has fully functional OBD systems and therefore meets the OBD requirements such as those specified in 40 CFR 86, subparts A and S when operating on the alternative fuel.

(5) Conversion test groups/engine families for conversions to dual-fuel or mixed-fuel vehicles/engines may not include vehicles/engines subject to different emissions standards unless applicable exhaust and OBD demonstrations are also conducted for the original fuel(s) demonstrating compliance with the most stringent standard represented in the test group. However the data generated from testing on the new fuel for dual-fuel or mixed-fuel test vehicles/engines may be carried over to vehicles/engines that otherwise meet the conversion test group/engine family criteria and for which the test vehicle/engine data demonstrate compliance with the applicable vehicle/engine standards. Clean alternative fuel conversion evaporative families for dual-fuel or mixed-fuel vehicles/engines cannot include vehicles/engines that were originally certified to different evaporative emissions standards.

(6) You must notify us by electronic submission in a format specified by the Administrator with all required documentation. The following must be submitted.

(i) You must describe how your conversion system complies with the good engineering judgment criteria in § 85.520(b)(3) and/or other requirements under this subpart or other applicable subparts such that the conversion system qualifies as a clean alternative fuel conversion. The submission must provide a level of technical detail sufficient for EPA to confirm the conversion system's ability to maintain or improve on emission levels in a worst case vehicle/engine. The submission of technical information must include a complete characterization of exhaust and evaporative emissions control strategies, the fuel delivery system, durability, and specifications related to OBD system functionality. You must present detailed information to confirm the durability of all relevant new and existing components and to explain why the conversion system will not harm the emission control system or degrade the emissions. EPA may ask you to supply additional information, including test data, to support the claim that the conversion system does not increase emissions and involves good engineering judgment that is being applied for purposes of conversion to a clean alternative fuel.

(ii) You must describe the group of vehicles/engines (conversion test group/conversion engine family) that is covered by your notification based on the criteria specified in paragraph (b)(2) of this section.

(iii) In lieu of specific test data, you may submit the following attestations for the appropriate statements of compliance, if you have sufficient basis to prove the statement is valid.

(A) The test group/engine family converted to an alternative fuel has properly exercised the optional and applicable statements of compliance or waivers in the certification regulations such as those specified in 40 CFR part 86, subparts A, B, and S and 40 CFR part 1065. Attest to each statement or waiver in your notification.

(B) The test group/engine family converted to dual-fuel or mixed-fuel operation retains all the OEM fuel system, engine calibration, and emission control system functionality when operating on the fuel with which the vehicle/engine was originally certified.

(C) The test group/engine family converted to dual-fuel or mixed-fuel operation retains all the functionality of the OEM OBD system (if the OEM vehicles/engines were required to be OBD equipped) when operating on the fuel with which the vehicle/engine was originally certified.

(D) The test group/engine family converted to dual-fuel or mixed-fuel

operation properly purges hydrocarbon vapor from the evaporative emission canister when the vehicle/engine is operating on the alternative fuel.

(E) The test group/engine family converted to an alternative fuel uses fueling systems, evaporative emission control systems, and engine powertrain components that are compatible with the alternative fuel and designed with the principles of good engineering judgment.

(iv) You must include any other information as the Administrator may deem appropriate, which may include test data, to establish the conversion system is for the purpose of conversion to a clean alternative fuel.

(7) Conversion systems must be properly installed and adjusted such that the vehicle/engine operates consistent with the principles of good engineering judgment and in accordance with all applicable regulations.

(8) EPA may ask for any documentation and/or ask you to conduct emission testing to demonstrate the conversion is for the purpose of a clean alternative fuel.

§ 85.524 Legacy standards.

Prior to April 8, 2011, the following emission standards applied for conversions of vehicles/engines with an original model year of 1992 or earlier:

(a) *Exhaust hydrocarbons.* Light-duty vehicles must meet the Tier 0 hydrocarbon standard specified in 40 CFR 86.094–8. Light-duty trucks must meet the Tier 0 hydrocarbon standard specified in 40 CFR 86.094–9. Otto-cycle heavy-duty engines must meet the hydrocarbon standard specified in 40 CFR 86.096–10. Diesel heavy-duty engines must meet the hydrocarbon standard in 40 CFR 86.096–11.

(b) CO, NO_X and particulate matter. Vehicles/engines must meet the CO, NO_X, and particulate matter emission standards that applied for the vehicle's/engine's original model year. If the engine was certified with a Family Emission Limit, as noted on the emission control information label, the modified engine may not exceed this Family Emission Limit.

(c) *Evaporative hydrocarbons.* Vehicles/engines must meet the evaporative hydrocarbon emission standards that applied for the vehicle's/engine's original model year.

§ 85.525 Applicable standards.

To qualify for an exemption from the tampering prohibition, vehicles/engines that have been converted to operate on a different fuel must meet emission standards and related requirements as follows:

(a) The modified vehicle/engine must meet the requirements that applied for the OEM vehicle/engine, or the most stringent OEM vehicle/engine standards in any allowable grouping. Fleet average standards do not apply unless clean alternative fuel conversions are specifically listed as subject to the standards.

(1) If the vehicle/engine was certified with a Family Emission Limit for NO_X, NO_X+HC, or particulate matter, as noted on the vehicle/engine emission control information label, the modified vehicle/engine may not exceed this Family Emission Limit.

(2) Compliance with light-duty vehicle greenhouse gas emission standards is demonstrated by complying with the N_2O and CH_4 standards and provisions set forth in 40 CFR 86.1818–12(f)(1) and the in-use CO_2 exhaust emission standard set forth in 40 CFR 86.1818–12(d) as determined by the OEM for the subconfiguration that is identical to the fuel conversion emission data vehicle (EDV). If the OEM complied with the light-duty greenhouse gas standards using the fleet averaging option for nitrous oxide (N_2O) and methane (CH_4), as allowed under 40 CFR 86.1818–12(f)(2), the calculations of the carbon-related exhaust emissions require the input of grams/mile values for N_2O and CH_4. Compliance with N_2O and CH_4 exhaust emission standards may be optionally demonstrated by following the same procedures set forth in 40 CFR 86.1818–12(f)(2), except that the carbon-related exhaust emission value determined for the fuel conversion EDV must comply with the in-use CO_2 exhaust emission standard set forth in 40 CFR 86.1818–12(d) and determined by the OEM for the subconfiguration that is identical to the fuel conversion EDV.

(3) Conversion systems for engines that would have qualified for chassis certification at the time of OEM certification may use those procedures, even if the OEM did not. Conversion manufacturers choosing this option must designate test groups using the appropriate criteria as described in this subpart and meet all vehicle chassis certification requirements set forth in 40 CFR part 86, subpart S.

(b) [Reserved]

§ 85.530 Vehicle/engine labels and packaging labels.

(a) The following labeling requirements apply for clean alternative fuel conversion manufacturers to qualify for an exemption from the tampering prohibition:

(1) You must make a supplemental emission control information label for each clean alternative fuel conversion system.

(2) On the supplemental label you must identify the OEM vehicles/engines for which you authorize the use of your clean alternative fuel conversion system, consistent with the requirements of this subpart. You may do this by identifying the OEM test group/engine family names and original model year to which your conversion is applicable as described in § 85.510(b)(1) or § 85.510(b)(2), § 85.515(b)(10)(ii), or § 85.520(b)(6)(ii). Your commercial packaging materials must also clearly describe this information.

(3) You must include the following on the supplemental label:

(i) You must state that the vehicle/engine has been equipped with a clean alternative fuel conversion system designed to allow it to operate on a fuel other than the fuel it was originally certified to operate on. Identify the fuel or fuels the vehicle/engine is designed to use and provide a unique conversion test group/conversion engine family name and conversion evaporative/refueling emissions family name.

(ii) You must identify your corporate name, address, and telephone number.

(iii) You must include one of the following statements that describes how you comply under this subpart and any applicable mileage or age restrictions due to how compliance was demonstrated:

(A) "This clean alternative fuel conversion system has been certified to meet EPA emission standards."

(B) "Testing has shown that this clean alternative fuel conversion system meets EPA emission standards under the intermediate age vehicle/engine program."

(C) "This conversion system is for the purpose of use of a clean alternative fuel in accordance with EPA regulations and is applicable only to vehicles/engines that are older than 11 years or 120,000 miles." (Values must be adjusted to reflect OEM useful life; useful life in hours should be added, if applicable).

(iv) State the following: "This conversion was manufactured and installed consistent with the principles of good engineering judgment and all U.S. EPA regulations."

(4) On the supplemental label, you must identify any original parts that will be removed for the conversion and any associated changes in maintenance specifications.

(5) On the supplemental label, you must include the date of conversion and the mileage of the vehicle/engine at the time of conversion. Include the hours of operation instead of mileage, if applicable.

(b) The supplemental emission control information label shall be placed in a permanent manner adjacent to the vehicle's/engine's original emission control information label if possible. If it is impractical to place the supplemental label adjacent to the original label, it must be placed where it will be seen by a person viewing the original label on a part that is needed for normal operation and does not normally need replacement. If the supplemental label information cannot fit on one label, the information can be logically split among two labels that are both near the original VECI or engine label.

(c) All information provided on clean alternative fuel conversion system packaging must be consistent with the required vehicle/engine labeling information.

(d) Examples of all labeling and warranty information must be provided as part of the application for certification or notification process.

(e) The marketing material and label information for a given conversion system must be consistent with the conversion manufacturer's demonstration/notification to EPA for that system.

§ 85.535 Liability, recordkeeping, and end of year reporting.

(a) Clean alternative fuel conversion manufacturers are liable for in-use performance of their conversion systems as outlined in this part.

(b) We may conduct or require testing on any vehicles/engines as allowed under the Clean Air Act. This may involve confirmatory testing, in-use testing, and/or selective enforcement audits for clean alternative fuel conversion systems. Dual-fuel vehicles/engines may be tested when operating on any of the fuels. Mixed-fuel vehicles/engines may be tested on any fuel blend ratio that is expected to occur during normal operation.

(c) Except for an application for certification, your actions to document compliance and notify us under this subpart are not a request for our approval. We generally do not give any formal approval short of issuing a certificate of conformity. However, if we learn that your actions fall short of full compliance with applicable requirements we may notify you that you have not met applicable requirements or that we need more information to make that determination. The exemption from the tampering prohibition may be void ab initio if the conversion manufacturer has not satisfied all of the applicable provisions of this subpart even if a submission to EPA has been made and the conversion system appears on EPA's publicly available list of compliant systems.

(d) Clean alternative fuel conversion manufacturers must accept in-use liability for warranty, are subject to defect reporting requirements, and may be required to recall any parts or systems for which the failure can be traced to the conversion, regardless of whether installation was proper or improper. The OEM shall remain liable for the performance of any parts or systems which retain their original function following conversion and are unaffected by the conversion.

(e) Clean alternative fuel conversion manufacturers must keep sufficient records for five years from the date of notification or certification, or the date of the last conversion installation, whichever is later, to show that they meet applicable requirements.

(f) Clean alternative fuel conversion manufacturers must submit an end of the year sales report to EPA describing the number of clean alternative fuel conversions by fuel type(s) and vehicle test group/engine family by January 31 of the following year. The number of conversions is the sum of the calendar year intermediate age conversions, outside useful life conversions, and the same conversion model year certified clean alternative fuel conversions. The number of conversions will be added to any other vehicle and engine sales accounted for using 40 CFR 86.1838–01 or 40 CFR 86.098–14 as appropriate to determine small volume manufacturer or qualified small volume test group/engine family status.

(g) Conversion manufacturers who market conversion systems for use on vehicles/engines other than the test group/engine families and evaporative/refueling families covered by the compliance demonstration and notification may be liable for a tampering violation for each vehicle/engine to which conversion system is misapplied.

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

■ 3. The authority citation for 40 CFR part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart S—[Amended]

■ 4. Section 86.1801–01 is amended by revising paragraph (b) and paragraphs (c)(4) and (c)(5) to read as follows:

§ 86.1801–01 Applicability.

* * * * *

(b) *Clean alternative fuel conversions.* The provisions of the subpart apply to clean alternative fuel conversions as defined in 40 CFR 85.502, of all model year light-duty vehicles, light-duty trucks, medium duty passenger vehicles, and complete Otto-cycle heavy-duty vehicles.

(c) * * *

(4) Upon preapproval by the Administrator, a manufacturer may optionally certify a clean alternative fuel conversion of a complete heavy-duty vehicle greater than 10,000 pounds Gross Vehicle Weight Rating and of 14,000 pounds Gross Vehicle Weight Rating or less under the heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part. Such preapproval will be granted only upon demonstration that chassis-based certification would be infeasible or unreasonable for the manufacturer to perform.

(5) A manufacturer may optionally certify a clean alternative fuel conversion of a complete heavy-duty vehicle greater than 10,000 pounds Gross Vehicle Weight Rating and of 14,000 pounds Gross Vehicle Weight Rating or less under the heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part without advance approval from the Administrator if the vehicle was originally certified to the heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part.

* * * * *

■ 5. Section 86.1801–12 is amended by revising paragraph (b) and paragraphs (c)(4) and (c)(5) to read as follows:

§ 86.1801–12 Applicability.

* * * * *

(b) *Clean alternative fuel conversions.* The provisions of the subpart apply to clean alternative fuel conversions as defined in 40 CFR 85.502, of all model year light-duty vehicles, light-duty trucks, medium duty passenger vehicles, and complete Otto-cycle heavy-duty vehicles.

(c) * * *

(4) Upon preapproval by the Administrator, a manufacturer may optionally certify a clean alternative fuel conversion of a complete heavy-duty vehicle greater than 10,000 pounds Gross Vehicle Weight Rating and of 14,000 pounds Gross Vehicle Weight Rating or less under the heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part. Such preapproval will be granted only upon demonstration that chassis-based certification would be infeasible or unreasonable for the manufacturer to perform.

(5) A manufacturer may optionally certify a clean alternative fuel

conversion of a complete heavy-duty vehicle greater than 10,000 pounds Gross Vehicle Weight Rating and of 14,000 pounds Gross Vehicle Weight Rating or less under the heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part without advance approval from the Administrator if the vehicle was originally certified to the heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part.

* * * * *

■ 6. Section 86.1810–01 is amended by revising paragraph (p) to read as follows:

§ 86.1810–01 General standards; increase in emissions; unsafe conditions; waivers.

* * * * *

(p) For Tier 2 and interim non-Tier 2 vehicles fueled by gasoline, diesel, natural gas, liquefied petroleum gas, or hydrogen, manufacturers may measure non-methane hydrocarbons (NMHC) in lieu of NMOG. Manufacturers must multiply NMHC measurements from gasoline vehicles by an adjustment factor of 1.04 before comparing with the NMOG standard to determine compliance with that standard. For vehicles fuel by natural gas, liquefied petroleum gas, hydrogen manufacturers must propose an adjustment factor to adjust NMHC results to properly represent NMOG results. Such factors must be based upon comparative testing of NMOG and NMHC emissions and be approved in advance by the Administrator.

■ 7. Section 86.1818–12 is amended by revising paragraph (a) to read as follows:

§ 86.1818–12 Greenhouse gas emission standards for light-duty vehicles, light-duty trucks, and medium-duty passenger vehicles.

(a) *Applicability.* This section contains standards and other regulations applicable to the emission of the air pollutant defined as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. This section applies to 2012 and later model year LDVs, LDTs and MDPVs, including multi-fuel vehicles, vehicles fueled with alternative fuels, hybrid electric vehicles, plug-in hybrid electric vehicles, electric vehicles, and fuel cell vehicles. Unless otherwise specified, multi-fuel vehicles must comply with all requirements established for each consumed fuel. The provisions of this section, except paragraph (c), also apply to clean alternative fuel conversions as defined in 40 CFR 85.502, of all model year light-duty vehicles, light-duty trucks, and medium-duty passenger vehicles. Manufacturers that qualify as a small business according to the requirements of § 86.1801–12(j) are exempt from the emission standards in this section. Manufacturers that have submitted a declaration for a model year according to the requirements of § 86.1801–12(k) for which approval has been granted by the Administrator are conditionally exempt from the emission standards in paragraphs (c) through (e) of this section for the approved model year.

* * * * *

■ 8. Section 86.1829–01 is amended by revising paragraphs (b)(1)(iii)(E) and (F), and (b)(2)(i) to read as follows:

§ 86.1829–01 Durability and emission testing requirements; waivers.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(E) In lieu of testing a gasoline, diesel, natural gas, liquefied petroleum gas, or hydrogen fueled Tier 2 or interim non-Tier 2 vehicle for formaldehyde emissions when such vehicles are certified based upon NMHC emissions, a manufacturer may provide a statement in its application for certification that such vehicles comply with the applicable standards. Such a statement must be based on previous emission tests, development tests, or other appropriate information.

(F) In lieu of testing a petroleum-, natural gas-, liquefied petroleum gas-, or hydrogen-fueled heavy-duty vehicle for formaldehyde emissions for certification, a manufacturer may provide a statement in its application for certification that such vehicles comply with the applicable standards. Such a statement must be based on previous emission tests, development tests, or other appropriate information.

(2) * * *

(i) *Testing at low altitude.* One EDV in each evaporative/refueling family and evaporative/refueling emission control system combination must be tested in accordance with the evaporative/refueling test procedure requirement of subpart B of this part. The configuration of the EDV will be determined under the provisions of § 86.1828–01. The EDV must also be tested for exhaust emission compliance using the FTP and SFTP procedures of subpart B of this part. In lieu of testing natural gas, liquefied petroleum gas, or hydrogen fueled vehicles to demonstrate compliance with the evaporative emission standards specified in § 86.1811–04(e), a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of appropriate testing and/or design parameters, all light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles comply with applicable emission standards.

* * * * *

■ 9. Section 86.1864–10 is amended by removing and reserving paragraph (a)(3) to read as follows.

§ 86.1864–10 How to comply with the fleet average cold temperature NMHC standards.

(a) * * *

(3) [Reserved]

* * * * *

■ 10. Section 86.1865–12 is amended by removing and reserving paragraph (a)(1)(ii) to read as follows.

§ 86.1865–12 How to comply with the fleet average CO_2 standards.

(a) * * *

(1) * * *

(ii) [Reserved]

* * * * *

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20
Migratory Bird Hunting; Proposed 2011–12 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals and Requests for 2013 Spring and Summer Migratory Bird Subsistence Harvest Proposals in Alaska; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–R9–MB–2011–0014; 91200–1231–9BPP–L2]

RIN 1018–AX34

Migratory Bird Hunting; Proposed 2011–12 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals and Requests for 2013 Spring and Summer Migratory Bird Subsistence Harvest Proposals in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of supplemental information.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service or we) proposes to establish annual hunting regulations for certain migratory game birds for the 2011–12 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. This proposed rule provides the regulatory schedule, describes the proposed regulatory alternatives for the 2011–12 duck hunting seasons, requests proposals from Indian Tribes that wish to establish special migratory game bird hunting regulations on Federal Indian reservations and ceded lands, and requests proposals for the 2013 spring and summer migratory bird subsistence season in Alaska. Migratory game bird hunting seasons provide opportunities for recreation and sustenance; aid Federal, State, and Tribal governments in the management of migratory game birds; and permit harvests at levels compatible with migratory game bird population status and habitat conditions.

DATES: You must submit comments on the proposed changes to the zone and split season guidelines for duck hunting and the associated draft environmental assessment on or before May 15, 2011. You must submit comments on the proposed regulatory alternatives for the 2011–12 duck hunting seasons on or before June 24, 2011. Following subsequent **Federal Register** publications, you will be given an opportunity to submit comments for proposed early-season frameworks by July 29, 2011, and for proposed late-season frameworks and subsistence migratory bird seasons in Alaska by August 31, 2011. Tribes must submit proposals and related comments on or before June 1, 2011. Proposals from the Co-management Council for the 2013 spring and summer migratory bird subsistence harvest season must be submitted to the Flyway Councils and the Service on or before June 15, 2011.

ADDRESSES: You may submit comments on the proposals by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R9–MB–2011–0014.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R9–MB–2011–0014; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept e-mailed or faxed comments. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

Send your proposals for the 2013 spring and summer migratory bird subsistence season in Alaska to the Executive Director of the Co-management Council, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503; or fax to (907) 786–3306; or e-mail to *ambcc@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, at: Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240; (703) 358–1714. For information on the migratory bird subsistence season in Alaska, contact Fred Armstrong, (907) 786–3887, or Donna Dewhurst, (907) 786–3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503.

SUPPLEMENTARY INFORMATION:

Background and Overview

Migratory game birds are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Under the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Secretary of the Interior is authorized to determine when "hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any * * * bird, or any part, nest, or egg" of migratory game birds can take place, and to adopt regulations for this purpose. These regulations are written after giving due regard to "the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds" and are updated annually (16 U.S.C. 704(a)). This responsibility has been delegated to the Service as the lead Federal agency for managing and conserving migratory birds in the United States.

The Service develops migratory game bird hunting regulations by establishing the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. Acknowledging regional differences in hunting conditions, the Service has administratively divided the Nation into four Flyways for the primary purpose of managing migratory game birds. Each Flyway (Atlantic, Mississippi, Central, and Pacific) has a Flyway Council, a formal organization generally composed of one member from each State and Province in that Flyway. The Flyway Councils, established through the International Association of Fish and Wildlife Agencies (IAFWA), also assist in researching and providing migratory game bird management information for Federal, State, and Provincial Governments, as well as private conservation agencies and the general public.

The process for adopting migratory game bird hunting regulations, located at 50 CFR 20, is constrained by three primary factors. Legal and administrative considerations dictate how long the rulemaking process will last. Most importantly, however, the biological cycle of migratory game birds controls the timing of data-gathering activities and thus the dates on which these results are available for consideration and deliberation.

The process includes two separate regulations-development schedules, based on early and late hunting season regulations. Early hunting seasons pertain to all migratory game bird species in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; migratory game birds other than waterfowl (*i.e.,* dove, woodcock, *etc.*); and special early waterfowl seasons, such as teal or resident Canada geese. Early hunting seasons generally begin before October 1. Late hunting seasons generally start on or after October 1 and include most waterfowl seasons not already established.

There are basically no differences in the processes for establishing either early or late hunting seasons. For each cycle, Service biologists gather, analyze, and interpret biological survey data and provide this information to all those involved in the process through a series of published status reports and presentations to Flyway Councils and other interested parties. Because the

Service is required to take abundance of migratory game birds and other factors into consideration, the Service undertakes a number of surveys throughout the year in conjunction with Service Regional Offices, the Canadian Wildlife Service, and State and Provincial wildlife-management agencies. To determine the appropriate frameworks for each species, we consider factors such as population size and trend, geographical distribution, annual breeding effort, the condition of breeding and wintering habitat, the number of hunters, and the anticipated harvest.

After frameworks, or outside limits, are established for season lengths, bag limits, and areas for migratory game bird hunting, migratory game bird management becomes a cooperative effort of State and Federal governments. After Service establishment of final frameworks for hunting seasons, the States may select season dates, bag limits, and other regulatory options for the hunting seasons. States may always be more conservative in their selections than the Federal frameworks but never more liberal.

Notice of Intent To Establish Open Seasons

This document announces our intent to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 2011–12 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20.

For the 2011–12 migratory game bird hunting season, we will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). We describe these proposals under Proposed 2011–12 Migratory Game Bird Hunting Regulations (Preliminary) in this document. We published definitions of waterfowl flyways and mourning dove management units, as well as a description of the data used in and the factors affecting the regulatory process, in the March 14, 1990, **Federal Register** (55 FR 9618).

Regulatory Schedule for 2011–12

This document is the first in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations. We will publish additional supplemental proposals for public comment in the **Federal Register** as population, habitat, harvest, and other information become available. Because of the late dates when certain portions of these data become available, we anticipate abbreviated comment periods on some proposals. Special circumstances limit the amount of time we can allow for public comment on these regulations.

Specifically, two considerations compress the time for the rulemaking process: The need, on one hand, to establish final rules early enough in the summer to allow resource agencies to select and publish season dates and bag limits before the beginning of hunting seasons and, on the other hand, the lack of current status data on most migratory game birds until later in the summer. Because the regulatory process is strongly influenced by the times when information is available for consideration, we divide the regulatory process into two segments: Early seasons and late seasons (further described and discussed above in the Background and Overview section).

Major steps in the 2011–12 regulatory cycle relating to open public meetings and **Federal Register** notifications are illustrated in the diagram at the end of this proposed rule. All publication dates of **Federal Register** documents are target dates.

All sections of this and subsequent documents outlining hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks
   A. General Harvest Strategy
   B. Regulatory Alternatives
   C. Zones and Split Seasons
   D. Special Seasons/Species Management
   i. September Teal Seasons
   ii. September Teal/Wood Duck Seasons
   iii. Black Ducks
   iv. Canvasbacks
   v. Pintails
   vi. Scaup
   vii. Mottled Ducks
   viii. Wood Ducks
   ix. Youth Hunt
2. Sea Ducks
3. Mergansers
4. Canada Geese
   A. Special Seasons
   B. Regular Seasons
   C. Special Late Seasons
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-Winged and White-Tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Later sections of this and subsequent documents will refer only to numbered items requiring your attention. Therefore, it is important to note that we will omit those items requiring no attention, and remaining numbered items will be discontinuous and appear incomplete.

We will publish final regulatory alternatives for the 2011–12 duck hunting seasons in mid-July. We will publish proposed early season frameworks in mid-July and late season frameworks in mid-August. We will publish final regulatory frameworks for early seasons on or about August 16, 2011, and those for late seasons on or about September 15, 2011.

Request for 2013 Spring and Summer Migratory Bird Subsistence Harvest Proposals in Alaska

Background

The 1916 Convention for the Protection of Migratory Birds between the United States and Great Britain (for Canada) established a closed season for the taking of migratory birds between March 10 and September 1. Residents of northern Alaska and Canada traditionally harvested migratory birds for nutritional purposes during the spring and summer months. The 1916 Convention and the subsequent 1936 Mexico Convention for the Protection of Migratory Birds and Game Mammals provide for the legal subsistence harvest of migratory birds and their eggs in Alaska and Canada during the closed season by indigenous inhabitants.

On August 16, 2002, we published in the **Federal Register** (67 FR 53511) a final rule that established procedures for incorporating subsistence management into the continental migratory bird management program. These regulations, developed under a new co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives, established an annual procedure to develop harvest guidelines for implementation of a spring and summer migratory bird subsistence harvest. Eligibility and inclusion requirements necessary to participate in the spring and summer migratory bird subsistence season in Alaska are outlined in 50 CFR part 92.

This proposed rule calls for proposals for regulations that will expire on

August 31, 2013, for the spring and summer subsistence harvest of migratory birds in Alaska. Each year, seasons will open on or after March 11 and close before September 1.

Alaska Spring and Summer Subsistence Harvest Proposal Procedures

We will publish details of the Alaska spring and summer subsistence harvest proposals in later **Federal Register** documents under 50 CFR part 92. The general relationship to the process for developing national hunting regulations for migratory game birds is as follows:

a. *Alaska Migratory Bird Co-Management Council.* The public may submit proposals to the Co-management Council during the period of November 1–December 15, 2011, to be acted upon for the 2013 migratory bird subsistence harvest season. Proposals should be submitted to the Executive Director of the Co-management Council, listed above under the caption **ADDRESSES.**

b. *Flyway Councils.*

1. The Co-management Council will submit proposed 2013 regulations to all Flyway Councils for review and comment. The Council's recommendations must be submitted before the Service Regulations Committee's last regular meeting of the calendar year in order to be approved for spring and summer harvest beginning April 2 of the following calendar year.

2. Alaska Native representatives may be appointed by the Co-management Council to attend meetings of one or more of the four Flyway Councils to discuss recommended regulations or other proposed management actions.

c. *Service Regulations Committee.* The Co-management Council will submit proposed annual regulations to the Service Regulations Committee (SRC) for their review and recommendation to the Service Director. Following the Service Director's review and recommendation, the proposals will be forwarded to the Department of the Interior for approval. Proposed annual regulations will then be published in the **Federal Register** for public review and comment, similar to the annual migratory game bird hunting regulations. Final spring and summer regulations for Alaska will be published in the **Federal Register** in the preceding winter after review and consideration of any public comments received.

Because of the time required for review by us and the public, proposals from the Co-management Council for the 2013 spring and summer migratory bird subsistence harvest season must be submitted to the Flyway Councils and the Service by June 15, 2012, for Council comments and Service action at the late-season SRC meeting.

Review of Public Comments

This proposed rulemaking contains the proposed regulatory alternatives for the 2011–12 duck hunting seasons. This proposed rulemaking also describes other recommended changes or specific preliminary proposals that vary from the 2010–11 final frameworks (see August 30, 2010, **Federal Register** (75 FR 52873) for early seasons and September 23, 2010, **Federal Register** (75 FR 58250) for late seasons) and issues requiring early discussion, action, or the attention of the States or Tribes. We will publish responses to all proposals and written comments when we develop final frameworks for the 2011–12 season. We seek additional information and comments on this proposed rule.

Consolidation of Notices

For administrative purposes, this document consolidates the notice of intent to establish open migratory game bird hunting seasons, the request for Tribal proposals, and the request for Alaska migratory bird subsistence seasons with the preliminary proposals for the annual hunting regulations-development process. We will publish the remaining proposed and final rulemaking documents separately. For inquiries on Tribal guidelines and proposals, Tribes should contact the following personnel:

Regions 1 and 8 (California, Idaho, Nevada, Oregon, Washington, Hawaii, and the Pacific Islands)—Brad Bortner, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, OR 97232–4181; (503) 231–6164.

Region 2 (Arizona, New Mexico, Oklahoma, and Texas)—Jeff Haskins, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103; (505) 248–7885.

Region 3 (Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin)—Jane West, U.S. Fish and Wildlife Service, Federal Building, One Federal Drive, Fort Snelling, MN 55111–4056; (612) 713–5432.

Region 4 (Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico and Virgin Islands, South Carolina, and Tennessee)—U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, GA 30345; (404) 679–4000.

Region 5 (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia)—U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589; (413) 253–8576.

Region 6 (Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming)—U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Building, Denver, CO 80225; (303) 236–8145.

Region 7 (Alaska)—Russ Oates, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503; (907) 786–3423.

Requests for Tribal Proposals

Background

Beginning with the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467) to establish special migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response to Tribal requests for our recognition of their reserved hunting rights, and for some Tribes, recognition of their authority to regulate hunting by both Tribal and nontribal members throughout their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both Tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by Tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by Tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, Tribal regulations established under the guidelines must be consistent with the annual March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Convention). The guidelines are applicable to those Tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also may be applied to the establishment of migratory game bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations

where Tribes have full wildlife management authority over such hunting, or where the Tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory game bird hunting by nonmembers on Indian-owned reservation lands, subject to our approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing migratory bird hunting by non-Indians on these lands. In such cases, we encourage the Tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a Tribe and State with the aim of facilitating an accord. We also will consult jointly with Tribal and State officials in the affected States where Tribes may wish to establish special hunting regulations for Tribal members on ceded lands. It is incumbent upon the Tribe and/or the State to request consultation as a result of the proposal being published in the **Federal Register**. We will not presume to make a determination, without being advised by either a Tribe or a State, that any issue is or is not worthy of formal consultation.

One of the guidelines provides for the continuation of Tribal members' harvest of migratory game birds on reservations where such harvest is a customary practice. We do not oppose this harvest, provided it does not take place during the closed season required by the Convention, and it is not so large as to adversely affect the status of the migratory game bird resource. Since the inception of these guidelines, we have reached annual agreement with Tribes for migratory game bird hunting by Tribal members on their lands or on lands where they have reserved hunting rights. We will continue to consult with Tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by Tribal members.

Tribes should not view the guidelines as inflexible. We believe that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian Tribes while also ensuring that the migratory game bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a Tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 2011–12 migratory game bird hunting season should submit a proposal that includes:

(1) The requested migratory game bird hunting season dates and other details regarding the proposed regulations;

(2) Harvest anticipated under the proposed regulations;

(3) Methods employed to monitor harvest (mail-questionnaire survey, bag checks, *etc.*);

(4) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would seriously impact the migratory game bird resource; and

(5) Tribal capabilities to establish and enforce migratory game bird hunting regulations.

A Tribe that desires the earliest possible opening of the migratory game bird season for nontribal members should specify this request in its proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a Tribe wishes to set more restrictive regulations than Federal regulations will permit for nontribal members, the proposal should request the same daily bag and possession limits and season length for migratory game birds that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

Tribal Proposal Procedures

We will publish details of Tribal proposals for public review in later **Federal Register** documents. Because of the time required for review by us and the public, Indian Tribes that desire special migratory game bird hunting regulations for the 2011–12 hunting season should submit their proposals as soon as possible, but no later than June 1, 2011.

Tribes should direct inquiries regarding the guidelines and proposals to the appropriate Service Regional Office listed above under the caption Consolidation of Notices. Tribes that request special migratory game bird hunting regulations for Tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

Public Comments

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments we receive. Such comments, and any additional information we receive, may lead to final regulations that differ from these proposals.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post all comments in their entirety—including your personal identifying information—on *http://www.regulations.gov.* Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, Room 4107, 4501 North Fairfax Drive, Arlington, VA 22203.

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments we receive during the comment period and respond to them after the closing date in any final rules.

NEPA Consideration

NEPA considerations are covered by the programmatic document "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published notice of availability in the **Federal Register** on June 16, 1988 (53

FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the address indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement (SEIS) for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006, **Federal Register** (71 FR 12216). We released the draft SEIS on July 9, 2010 (75 FR 39577). The draft SEIS is available either by writing to the address indicated under **ADDRESSES** or by viewing our Web site at *http://www.fws.gov/migratorybirds.*

Because the draft EIS does not specifically cover the composition and details of the zone and split season guidelines, we have also prepared a separate environmental assessment on the proposed changes to the zone and split season guidelines for duck hunting. It is available either by writing to the address indicated under **FOR FURTHER INFORMATION CONTACT** or by viewing on our Web site at *http://www.fws.gov/migratorybirds,* or at *http://www.regulations.gov.*

Endangered Species Act Consideration

Before issuance of the 2011–12 migratory game bird hunting regulations, we will comply with provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under section 7 of the Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order 12866

The Office of Management and Budget has determined that this proposed rule is significant and has reviewed this rule under Executive Order 12866. OMB bases its determination of regulatory significance upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

An economic analysis was prepared for the 2008–09 season. This analysis was based on data from the 2006 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) Issue restrictive regulations allowing fewer days than those issued during the 2007–08 season, (2) Issue moderate regulations allowing more days than those in alternative 1, and (3) Issue liberal regulations identical to the regulations in the 2007–08 season. For the 2008–09 season, we chose alternative 3, with an estimated consumer surplus across all flyways of $205–$270 million. We also chose alternative 3 for the 2009–10 and the 2010–11 seasons. At this time, we are proposing no changes to the season frameworks for the 2011–12 season, and as such, we will again consider these three alternatives. However, final frameworks will be dependent on population status information available later this year. For these reasons, we have not conducted a new economic analysis, but the 2008–09 analysis is part of the record for this rule and is available at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2011–0014.

Regulatory Flexibility Act

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.2 billion at small businesses in 2008. Copies of the Analysis are available upon request from the Division of Migratory Bird Management (see **FOR FURTHER INFORMATION CONTACT**) or from our Web site at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2011–0014.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, *etc.*

Small Business Regulatory Enforcement Fairness Act

This proposed rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule would have an annual effect on the economy of $100 million or more. However, because this rule would establish hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these proposed regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under

regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of our Migratory Bird Surveys and assigned control number 1018–0023 (expires 3/31/2011). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations.

OMB has also approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska, and assigned control number 1018–0124 (expires 4/30/2013).

A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this proposed rulemaking would not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this proposed rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule would not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules would allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian Tribes and have determined that there are no effects on Indian trust resources. However, in this proposed rule, we solicit proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2011–12 migratory bird hunting season. The resulting proposals will be contained in a separate proposed rule. By virtue of these actions, we have consulted with Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Indian Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Authority

The rules that eventually will be promulgated for the 2011–12 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

Dated: March 11, 2011.

Will Shafroth,

Acting Assistant Secretary for Fish Wildlife and Parks.

Proposed 2011–12 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, we may defer specific regulatory proposals. We are proposing a change to the existing guidelines for the establishment of zone and split seasons for duck hunting (see C. Zones and Splits Seasons). No other changes from the final 2010–11 frameworks established on August 30 and September 23, 2010 (75 FR 52873 and 75 FR 58250) are being proposed at this time. Other issues requiring early discussion, action, or the attention of the States or Tribes are contained below:

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/ Species Management. Only those containing substantial recommendations are discussed below.

A. General Harvest Strategy

We propose to continue using adaptive harvest management (AHM) to help determine appropriate duck-hunting regulations for the 2011–12 season. AHM permits sound resource decisions in the face of uncertain regulatory impacts and provides a mechanism for reducing that uncertainty over time. We use AHM to evaluate four alternative regulatory levels for duck hunting based on the population status of mallards. (We enact special hunting restrictions for species of special concern, such as canvasbacks, scaup, and pintails).

Pacific, Central and Mississippi Flyways

Until 2008, we based the prescribed regulatory alternative for the Pacific, Central, and Mississippi Flyways on the status of mallards and breeding-habitat

conditions in central North America (Federal survey strata 1–18, 20–50, and 75–77, and State surveys in Minnesota, Wisconsin, and Michigan). In 2008, we based hunting regulations upon the breeding stock that contributes primarily to each Flyway. In the Pacific Flyway, we set hunting regulations based on the status and dynamics of a newly defined stock of "western" mallards. Western mallards are those breeding in Alaska (as based on Federal surveys in strata 1–12), and in California and Oregon (as based on State-conducted surveys). In the Central and Mississippi Flyways, we set hunting regulations based on the status and dynamics of mid-continent mallards. Mid-continent mallards are those breeding in central North America not included in the Western mallard stock, as defined above.

For the 2011–12 season, we recommend continuing to use independent optimization to determine the optimum regulations. This means that we would develop regulations for mid-continent mallards and western mallards independently, based upon the breeding stock that contributes primarily to each Flyway. We detailed implementation of this new AHM decision framework in the July 24, 2008, **Federal Register** (73 FR 43290).

Atlantic Flyway

Since 2000, we have prescribed a regulatory alternative for the Atlantic Flyway based on the population status of mallards breeding in eastern North America (Federal survey strata 51–54 and 56, and State surveys in New England and the mid-Atlantic region). We recommend continuation of this protocol for the 2011–12 season.

Final 2011–2012 AHM Protocol

We will detail the final AHM protocol for the 2011–12 season in the early-season proposed rule, which we will publish in mid-July (see Schedule of Regulations Meetings and Federal Register Publications at the end of this proposed rule for further information). We will propose a specific regulatory alternative for each of the Flyways during the 2011–12 season after survey information becomes available in late summer. More information on AHM is located at *http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/AHM/AHM-intro.htm.*

B. Regulatory Alternatives

The basic structure of the current regulatory alternatives for AHM was adopted in 1997. In 2002, based upon recommendations from the Flyway Councils, we extended framework dates in the "moderate" and "liberal" regulatory alternatives by changing the opening date from the Saturday nearest October 1 to the Saturday nearest September 24; and changing the closing date from the Sunday nearest January 20 to the last Sunday in January. These extended dates were made available with no associated penalty in season length or bag limits. At that time we stated our desire to keep these changes in place for 3 years to allow for a reasonable opportunity to monitor the impacts of framework-date extensions on harvest distribution and rates of harvest before considering any subsequent use (67 FR 12501, March 19, 2002).

For 2011–12, we are proposing to maintain the same regulatory alternatives that were in effect last year (see accompanying table for specifics of the proposed regulatory alternatives). Alternatives are specified for each Flyway and are designated as "RES" for the restrictive, "MOD" for the moderate, and "LIB" for the liberal alternative. We will announce final regulatory alternatives in mid-July. We will accept public comments until June 25, 2011, and you should send your comments to an address listed under the caption **ADDRESSES**.

C. Zones and Split Seasons

In the August 25, 2010, proposed rule (75 FR 52398) and the September 23, 2010, final rule (75 FR 58250), we announced our intention to propose changes to the existing zone and split season guidelines for possible implementation in 2011 for use in State selections for the 2011–12 hunting seasons. This proposed rule for the 2011–12 hunting season continues that intention and discussion.

Background

We annually issue regulations permitting the sport hunting of migratory birds. Zones and split seasons are "special regulations" designed to distribute hunting opportunities and harvests according to temporal, geographic, and demographic variability in waterfowl and other migratory game bird populations. For ducks, States have been allowed the option of dividing their allotted hunting days into two (or in some cases, three) segments to take advantage of species-specific peaks of abundance or to satisfy hunters in different areas who want to hunt during the peak of waterfowl abundance in their area. However, the split-season option does not fully satisfy many States who wish to provide a more equitable distribution of harvest opportunities. Therefore, we also have allowed the establishment of independent seasons in two or more zones within States for the purpose of providing more equitable distribution of harvest opportunity for hunters throughout the State.

In 1978, we prepared an environmental assessment (EA) on the use of zones to set duck hunting regulations. A primary tenet of the 1978 EA was that zoning would be for the primary purpose of providing equitable distribution of hunting opportunity within a State or region and not for the purpose of increasing total annual waterfowl harvest in the zoned areas. In fact, harvest levels were to be adjusted downward if they exceeded traditional levels as a result of zoning. Subsequently, we conducted a review of the use of zones and split seasons in 1990.

Currently, every 5 years, States are afforded the opportunity to change the zoning and split season configuration within which they set their annual duck hunting regulations. While the schedule of "open seasons" for making changes to splits and zones is being evaluated in the recently released draft supplemental environmental impact statement (SEIS) for the migratory bird hunting program (see NEPA Considerations for further information), the specific guidelines for choosing splits and zones are not a part of that evaluation. The current guidelines have remained unchanged since 1996.

Public Comments

The Flyway Council recommendations and public comments discussed below are from the 2010–11 regulatory process and were also included in the August 25, 2010, proposed rule (75 FR 52398) and the September 23, 2010, final rule (75 FR 58250).

Council Recommendations: The Atlantic, Central, and Pacific Flyway Councils recommended that the Service allow 3 zones, with 2-way splits in each zone, and 4 zones with no splits as additional zone/split-season options for duck seasons during 2011–15.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the Service allow 3 zones with the season split into 2 segments in each zone, 4 zones with no splits, and 2 zones with the season split into 3 segments in each zone as additional zone/split-season options for duck seasons during 2011–15.

In addition, all four Flyway Councils recommended that States with existing grandfathered status be allowed to retain that status.

Written Comments: The National Flyway Council requested that the Service allow 3 zones, with 2-way splits in each zone, and 4 zones with no splits as additional zone/split-season options for duck seasons during 2011–15.

The Illinois Department of Natural Resources and the Wisconsin Department of Natural Resources requested that the Service allow 3 zones, with 2-way splits in each zone, and 4 zones with no splits as additional zone/split-season options for duck seasons during 2011–15.

The Delta Waterfowl Foundation, the Max McGraw Wildlife Foundation, the LaCrosse County Conservation Alliance, the Governor of Illinois, and several individuals expressed support for the Flyway Councils' recommended changes to the existing zone and split season guidelines.

Service Response and Proposal

In 1990, because of concerns about the proliferation of zones and split seasons for duck hunting, we conducted a cooperative review and evaluation of the historical use of zone/split options. This review did not show that the proliferation of these options had increased harvest pressure; however, the ability to detect the impact of zone/split configurations was poor because of unreliable response variables, the lack of statistical tests to differentiate between real and perceived changes, and the absence of adequate experimental controls. Consequently, we established guidelines to provide a framework for controlling the proliferation of changes in zone/split options. The guidelines identified a limited number of zone/split configurations that could be used for duck hunting and restricted the frequency of changes in these configurations to 5-year intervals.

In 1996, we revised the guidelines to provide States with greater flexibility in using their zone/split arrangements. In 2005, in further response to recommendations from the Flyway Councils, we considered changes to the zone/split guidelines. After our review, however, we concluded that the current guidelines need not be changed. We further stated that the guidelines would be used for future open seasons (70 FR 55667, September 22, 2005).

However, while we continue to support the use of guidelines for providing a stable framework for controlling the number of changes to zone/split options, we note the consensus position among all the Flyway Councils on their proposal and are sensitive to the States' desires for flexibility in addressing concerns of the hunting public, which, in part, provided the motivation for this recommendation. Furthermore, we remain supportive of the recommendations from the 2008 Future of Waterfowl Management Workshop that called for a greater emphasis on the effects of management actions on the hunting public. Thus, we are proposing that two specific additional options be added to the existing zone and split season criteria governing State selection of waterfowl zones and splits. The additional options would include four zones with no splits and three zones with the option for 2-way (2-segment) split seasons in one or both zones. Otherwise, the criteria and rules governing the application of those criteria would remain unchanged.

In making this proposal and in our review of the Flyway Council comments and recommendations, we note that existing human dimensions data on the relationship of harvest regulations, and specifically zones and splits, to hunter recruitment, retention, and/or satisfaction are equivocal or lacking. In the face of uncertainty over the effects of management actions, the waterfowl management community has broadly endorsed adaptive management and the principles of informed decision-making as a means of accounting for and reducing that uncertainty. The necessary elements of informed decision-making include: clearly articulated objectives, explicit measurable attributes for objectives, identification of a suite of potential management actions, some means of predicting the consequences of management actions with respect to stated objectives, and, finally, a monitoring program to compare observations with predictions as a basis for learning, policy adaptation, and more informed decision-making. Currently, none of these elements are used to support decision-making that involves human dimensions considerations. Accordingly, we see this as an opportunity to advance an informed decision-making framework that explicitly considers human dimensions issues.

To that end, we requested that the National Flyway Council marshal the expertise and resources of the Human Dimensions Working Group to develop explicit human dimensions objectives related to expanding zone and split options and a study plan to evaluate the effect of the proposed action in achieving those objectives. It is our hope that the study plan would include hypotheses and specific predictions about the effect of changing zone/split criteria on stated human dimensions objectives, and monitoring and evaluation methods that would be used to test those predictions.

We believe that insights gained through such an evaluation would be invaluable in furthering the ongoing dialogue regarding fundamental objectives of waterfowl management and an integrated and coherent decision framework for advancing those objectives. We reviewed the objectives and study plan at our February 2, 2011, SRC meeting. We will consider this plan, along with public and Flyway comments on the proposed change to the zones and splits criteria, and with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) analysis on this proposal (see discussion in Impacts of Proposed Change), in making a final decision on a course of action this year. It remains our hope that any changes to the existing guidelines for duck zones and split seasons would be implemented in 2011 and would affect State selections for early and late migratory bird hunting seasons for the 2011–12 seasons. However, we are cognizant of necessary Flyway Council, State, and public review of this proposal, and implementation of any changes may not be possible this year, especially considering the additional time necessary for States to adequately conduct their own public review of possible zone and split season scenarios and ultimate formulation of a decision. Thus, we are open to either delaying implementation of any finalized changes in the guidelines to next year or possibly allowing States to have up to 2 years to decide on a course of action for the next 5 years. We welcome comment on this aspect of our proposal.

Proposed Guidelines for Duck Zones and Split Seasons

The following zone/split-season guidelines apply only for the *regular* duck season:

(1) A zone is a geographic area or portion of a State, with a contiguous boundary, for which independent dates may be selected for the regular duck season.

(2) Consideration of changes for management-unit boundaries is not subject to the guidelines and provisions governing the use of zones and split seasons for ducks.

(3) Only minor (less than a county in size) boundary changes will be allowed for any grandfathered arrangement, and changes are limited to the open season.

(4) Once a zone/split option is selected during an open season, it must remain in place for the following 5 years.

Any State may continue the configuration used in the previous 5-

year period. If changes are made, the zone/split-season configuration must conform to one of the following options:

(1) No more than four zones with no splits,

(2) Split seasons (no more than 3 segments) with no zones, or

(3) No more than three zones with the option for 2-way (2-segment) split seasons in one, two, or all zones.

Grandfathered Zone/Split Arrangements

When we first implemented the zone/split guidelines in 1991, several States had completed experiments with zone/split arrangements different from our original options. We offered those States a one-time opportunity to continue ("grandfather") those arrangements, with the stipulation that only minor changes could be made to zone boundaries. If any of those States now wish to change their zone/split arrangement:

(1) The new arrangement must conform to one of the 3 options identified above; and

(2) The State cannot go back to the grandfathered arrangement that it previously had in place.

Management Units

We will continue to utilize the specific limitations previously established regarding the use of zone and split seasons in special management units, including the High Plains Mallard Management Unit. We note that the original justification and objectives established for the High Plains Mallard Management Unit provided for additional days of hunting opportunity at the end of the regular duck season. In order to maintain the integrity of the management unit, current guidelines prohibit simultaneous zoning and/or 3-way split seasons within a management unit and the remainder of the State. Removal of this limitation would allow additional proliferation of zone/split configurations and compromise the original objectives of the management unit.

Impacts of Proposed Change

We prepared an EA on the proposed zone and split season guidelines and provide a brief summary of the anticipated impacts of the preferred alternative (specifics are detailed in Service Response and Proposal) with regard to the guidelines. Specifics of each of the four alternatives we analyzed can be found on our Web site at *http://www.fws.gov/migratorybirds,* or at *http://www.regulations.gov.*

In summary, we anticipate that the proposed changes to the guidelines, specifically adopting the preferred alternative, would result in an increase in the number of exposure days (days in which ducks are exposed to hunting) throughout a hunting season. We estimate that the addition of one duck zone in all States could increase the number of duck exposure days by 5 to 25 percent, depending on Flyway. Further, regression analysis of the number of duck exposure days and number of duck zones within a State indicated that the addition of one zone in all States (excluding grandfathered States) could result in up to a 17 percent increase in the national duck harvest (or approximately 2.2 million birds) above the "no change" alternative (13.8 million ducks). It is important to note that this estimate is for total duck harvest nationwide, and we would expect the potential percentage increases to vary between Flyways, States, and species. While limitations in data preclude us from making any reliable estimates on other than a Flyway scale for all ducks, we estimate that the percentage increase in the Mississippi Flyway could be 25 percent, while the percent increase in the Pacific Flyway would likely be less than 3 percent. However, it is highly unlikely that all States (especially grandfathered States) would take advantage of these proposed changes and choose to add a zone; thus, the magnitude of any potential increase in harvest would likely be lower than the estimated 17 percent.

Additionally, we annually prepare a biological opinion under section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) prior to establishing annual hunting regulations for migratory birds. Regulations promulgated as a result of this consultation remove or alleviate chances of conflict between seasons for migratory game birds and endangered and threatened species and their critical habitats (see Endangered Species Act Consideration section of the preamble of this proposed rule for further information and discussion).

We also do not believe the preferred alternative would recruit new hunters, and therefore hunter numbers would probably remain similar to 2008 levels, when the last economic analysis was conducted. However, if increasing the possible number of zones and split season configurations encourages current hunters to spend more days afield, we would expect a slight increase in expenditures. Therefore, the national estimate of the consumer surplus expected under this alternative may be slightly higher than the estimate of $317 million annually (range of $274 million to $362 million [2007$]) that we would expect under the "no change" alternative. In general, the non-hunting public has not expressed an opinion about zoning and split seasons in the past. Within this large group, individuals opposed to hunting will likely object to increased zoning and/or split seasons if they believe it will enhance or encourage hunting. Others generally favor more restrictive regulations, and some further believe that all hunting should be discontinued. We note that the four Flyway Councils support the preferred alternative. Duck hunter numbers would likely be similar to that of 2008, which would maintain the current level of revenues to the States and Service through sales of waterfowl hunting licenses and duck stamps. While this alternative potentially could increase hunter expenditures above the current level of $1.2 billion (2007$), we have no specific information available that would allow an accurate estimation of this increase. However, we believe any potential increase would likely be negligible.

The EA is available by either writing to the address indicated under **FOR FURTHER INFORMATION CONTACT** in the preamble of this proposed rule or by viewing on our Web site at *http://www.fws.gov/migratorybirds,* or at *http://www.regulations.gov.*

After the comment period ends, we will analyze comments received and determine whether to: (1) Prepare a final EA and Finding of No Significant Impact and authorize [the preferred alternative], (2) reconsider our preferred alternative, or (3) determine that an Environmental Impact Statement should be prepared.

14. Woodcock

In 2008, we completed a review of available woodcock population databases to assess their utility for developing a woodcock harvest strategy. Concurrently, we requested that the Atlantic, Mississippi, and Central Flyway Councils appoint members to a working group to cooperate with us on developing a woodcock harvest strategy. In February 2010, the working group completed a draft interim harvest strategy for consideration by the Flyway Councils at their March 2010 meetings.

The working group's draft interim harvest strategy provides a transparent framework for making regulatory decisions for woodcock season length and bag limit while we work to improve monitoring and assessment protocols for this species. While the strategy's objective is to set woodcock harvest at a level commensurate with population, data limitations preclude accurately assessing harvest potential at this time. Thus, the strategy's thresholds for changing regulations are based on the

premise that further population declines would result in decreased harvest, while population increases would allow for additional harvest. The working group recommended that the interim harvest strategy be implemented for the 2011–12 hunting season, that the Service and Flyway Councils evaluate the strategy after 5 years, and that we continue to assess the feasibility of developing a derived harvest strategy.

In the May 13, 2010, **Federal Register** (75 FR 27144), we stated that following review and comment by the Flyway Councils, we would announce our intentions whether to propose the draft strategy. Given the unanimous Flyway Council approval of the working group's draft interim harvest strategy, we concurred with the three Flyway Councils and proposed adoption of the strategy in the July 29, 2010, **Federal Register** (75 FR 44856) beginning in the 2011–12 hunting season for a period of 5 years (2011–15). Based on public comment, we finalized adoption of the strategy in the August 30, 2010, **Federal Register** (75 FR 52873) and stated that we planned to implement the strategy beginning with the 2011–12 hunting season. Specifics of the interim harvest strategy can be found at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

16. Mourning Doves

In 2006 (see July 28, 2006, **Federal Register**, 71 FR 43008), we approved guidelines for the use of zone/split seasons for doves with implementation beginning in the 2007–08 season. While the initial period was for 4 years (2007–10), we further stated that beginning in 2011, zoning would conform to a 5-year period.

The next open season for changes to dove zone/split configurations will be this year for the 2011–15 period. The guidelines are as follows:

Guidelines for Dove Zones and Split Seasons in the Eastern and Central Mourning Dove Management Units

(1) A zone is a geographic area or portion of a State, with a contiguous boundary, for which independent seasons may be selected for dove hunting.

(2) States may select a zone/split option during an open season. The option must remain in place for the following 5 years except that States may make a one-time change and revert to their previous zone/split configuration in any year of the 5-year period. Formal approval will not be required, but States must notify the Service before making the change.

(3) Zoning periods for dove hunting will conform to those years used for ducks, *e.g.,* 2006–10.

(4) The zone/split configuration consists of two zones with the option for 3-way (3-segment) split seasons in one or both zones. As a grandfathered arrangement, Texas will have three zones with the option for 2-way (2-segment) split seasons in one, two, or all three zones.

(5) States that do not wish to zone for dove hunting may split their seasons into no more than 3 segments.

For the 2011–15 period, any State may continue the configuration used in 2007–10. If changes are made, the zone/split-season configuration must conform to one of the options listed above.

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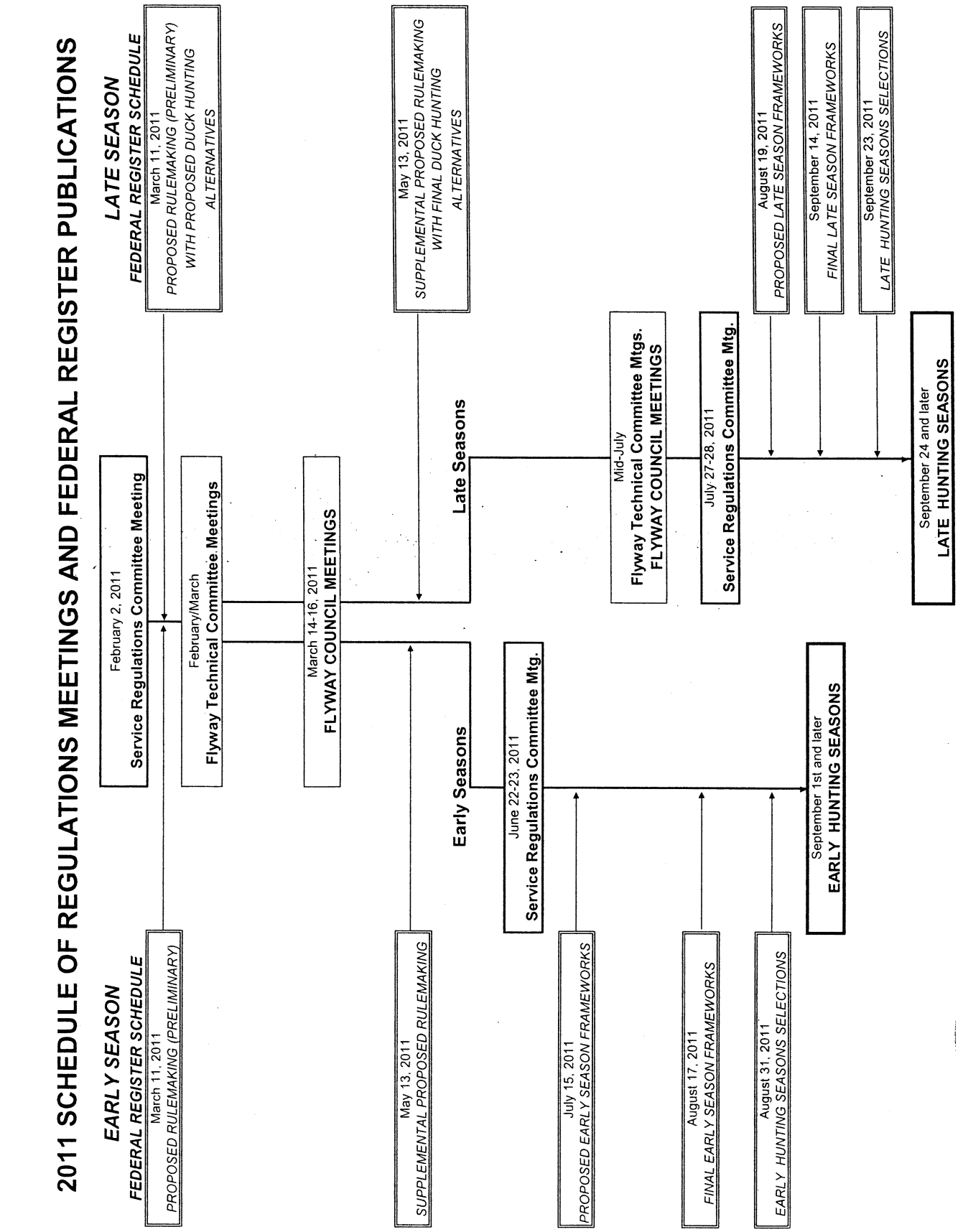
2011 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS
EARLY SEASON
FEDERAL REGISTER SCHEDULE
March 11, 2011
PROPOSED RULEMAKING (PRELIMINARY)
May 13, 2011
SUPPLEMENTAL PROPOSED RULEMAKING
July 15, 2011
PROPOSED EARLY SEASON FRAMEWORKS
August 17, 2011
FINAL EARLY SEASON FRAMEWORKS
August 31, 2011
EARLY HUNTING SEASONS SELECTIONS
February 2, 2011
Service Regulations Committee Meeting
February/March
Flyway Technical Committee Meetings
March 14-16, 2011
FLYWAY COUNCIL MEETINGS
Early Seasons
June 22-23, 2011
Service Regulations Committee Mtg.
September 1st and later
EARLY HUNTING SEASONS
LATE SEASON
FEDERAL REGISTER SCHEDULE
March 11, 2011
PROPOSED RULEMAKING (PRELIMINARY)
WITH PROPOSED DUCK HUNTING
ALTERNATIVES
May 13, 2011
SUPPLEMENTAL PROPOSED RULEMAKING
WITH FINAL DUCK HUNTING
ALTERNATIVES
Late Seasons
Mid-July
Flyway Technical Committee Mtgs.
FLYWAY COUNCIL MEETINGS
July 27-28, 2011
Service Regulations Committee Mtg.
August 19, 2011
PROPOSED LATE SEASON FRAMEWORKS
September 14, 2011
FINAL LATE SEASON FRAMEWORKS
September 23, 2011
LATE HUNTING SEASONS SELECTIONS
September 24 and later
LATE HUNTING SEASONS

PROPOSED REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2011-12 SEASON

	ATLANTIC FLYWAY			MISSISSIPPI FLYWAY			CENTRAL FLYWAY (a)			PACIFIC FLYWAY (b)(c)		
	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB
Beginning Shooting Time	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24
Closing Date	Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.
Season Length (in days)	30	45	60	30	45	60	39	60	74	60	86	107
Daily Bag/ Possession Limit	3 6	6 12	6 12	3 6	6 12	6 12	3 6	6 12	6 12	4 8	7 14	7 14
Species/Sex Limits within the Overall Daily Bag Limit												
Mallard (Total/Female)	3/1	4/2	4/2	2/1	4/1	4/2	3/1	5/1	5/2	3/1	5/2	7/2

(a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway, with the exception of season length. Additional days would be allowed under the various alternatives as follows: restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(c) In Alaska, framework dates, bag limits, and season length would be different from the remainder of the Pacific Flyway. The bag limit would be 5-8 under the restrictive alternative, and 7-10 under the moderate and liberal alternatives. Under all alternatives, season length would be 107 days and framework dates would be Sep. 1 - Jan. 26.

[FR Doc. 2011–8404 Filed 4–7–11; 8:45 am]
BILLING CODE 4310–55–C

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Part IV

The President

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Presidential Documents

Title 3—

The President

Executive Order 13569 of April 5, 2011

Amendments to Executive Orders 12824, 12835, 12859, and 13532, Reestablishment Pursuant to Executive Order 13498, and Revocation of Executive Order 13507

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Executive Order 12824, of December 7, 1992 ("Establishing the Transportation Distinguished Service Medal"), as amended, is hereby further amended by striking "a member of the Coast Guard" in section 1 and inserting in lieu thereof "any member of the Armed Forces of the United States".

Sec. 2. Executive Order 12835 of January 25, 1993 ("Establishment of the National Economic Council"), as amended, is hereby further amended by striking "(o) Assistant to the President for Energy and Climate Change;" in section 2 and inserting in lieu thereof "(o) Chair of the Council on Environmental Quality;".

Sec. 3. Executive Order 12859 of August 16, 1993 ("Establishment of the Domestic Policy Council"), as amended, is hereby further amended by striking "(v) Assistant to the President for Energy and Climate Change;" in section 2 and inserting in lieu thereof "(v) Chair of the Council on Environmental Quality;".

Sec. 4. Executive Order 13532 of February 26, 2010 ("Promoting Excellence, Innovation, and Sustainability at Historically Black Colleges and Universities"), is hereby amended by striking "34 C.F.R. 602.8" in section 4(a) and inserting in lieu thereof "34 C.F.R. 608.2".

Sec. 5. The President's Advisory Council on Faith-Based and Neighborhood Partnerships, as set forth under the provisions of Executive Order 13498 of February 5, 2009, is hereby reestablished and shall terminate 2 years from the date of this order unless extended by the President.

Sec. 6. Executive Order 13507 of April 8, 2009 ("Establishment of the White House Office of Health Reform"), is hereby revoked.

Sec. 7. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
April 5, 2011.

[FR Doc. 2011–8642
Filed 4–7–11; 11:15 am]
Billing code 3195–W1–P

Presidential Documents

Memorandum of April 6, 2011

Unified Command Plan 2011

Memorandum for the Secretary of Defense

Pursuant to my authority as Commander in Chief, I hereby approve and direct the implementation of the revised Unified Command Plan.

Consistent with title 10, United States Code, section 161(b)(2) and title 3, United States Code, section 301, you are directed to notify the Congress on my behalf.

You are authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, April 6, 2011

[FR Doc. 2011–8644
Filed 4–7–11; 11:15 am]
Billing code 5000–04–P

FEDERAL REGISTER

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Part V

The President

Notice of April 7, 2011—Continuation of the National Emergency With Respect to Somalia

Federal Register
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Presidential Documents

Title 3—

The President

Notice of April 7, 2011

Continuation of the National Emergency With Respect to Somalia

On April 12, 2010, by Executive Order 13536, I declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the deterioration of the security situation and the persistence of violence in Somalia, and acts of piracy and armed robbery at sea off the coast of Somalia, which have repeatedly been the subject of United Nations Security Council resolutions, and violations of the Somalia arms embargo imposed by the United Nations Security Council.

Because the situation with respect to Somalia continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on April 12, 2010, and the measures adopted on that date to deal with that emergency, must continue in effect beyond April 12, 2011. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13536.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
April 7, 2011.

[FR Doc. 2011–8692
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